

# ATTACHMENT B

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,  
  
Plaintiff-Applicant,  
  
v.  
  
BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
  
Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

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In re:  
BERNARD L. MADOFF,  
  
Debtor.

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IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,  
  
Plaintiff,

v.

Adv. Pro. No. 10-05421 (SMB)

FRANK J. AVELLINO, et al.,  
  
Defendants.

**EXPERT REPORT OF  
LISA M. COLLURA, CPA, CFE, CFF**

*For the Frank J. Avellino, et al. Action*

**June 5, 2020**

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## **I. PROFESSIONAL BACKGROUND**

1. I am a Senior Managing Director in the Forensic and Litigation Consulting practice of FTI Consulting, Inc. ("FTI"), with over 25 years of experience in accounting, auditing and litigation consulting services. I specialize in providing forensic accounting and financial fraud investigative services in connection with internal investigations on behalf of trustees, boards of directors and audit committees of companies.
2. I have extensive experience in conducting large-scale, fact-finding investigations into fraudulent financial transactions, including tracing significant flows of funds between accounts and entities. During my career at FTI, I have assisted in the investigation of several of the largest fraud cases in the United States.
3. I am a Certified Public Accountant (CPA), a Certified Fraud Examiner (CFE), a member of the American Institute of Certified Public Accountants (AICPA), and am Certified in Financial Forensics (CFF) by the AICPA. My curriculum vitae, attached as **Exhibit 1** to this report, further describes my professional credentials, experience, and qualifications, including my testimony in the last four years.

## **II. BRIEF BACKGROUND ON BLMIS AND AVELLINO & BIENES**

4. Bernard L. Madoff Investment Securities LLC ("BLMIS") was an investment firm owned and operated by Bernard L. Madoff ("Madoff"). On December 11, 2008, Madoff was arrested for violating multiple securities laws in connection with running a Ponzi scheme through the investment advisory business of BLMIS (the "IA Business").
5. Defendant Avellino & Bienes ("A&B") was a partnership that grew out of an accounting firm that was run by Saul Alpern, Madoff's father-in-law. In the 1960s, after Frank Avellino joined the firm and it became known as "Alpern & Avellino," the partnership began to accept funds from clients for investment exclusively in BLMIS. Shortly after Michael Bienes joined the partnership, it became known as "Avellino & Bienes." By the mid-1970s, A&B

maintained a number of customer accounts (the “A&B Accounts”<sup>1</sup>) with the IA Business through which they deposited clients’ funds. By 1984, A&B closed the accounting portion of its business to focus on feeding its clients’ funds to the IA Business through the A&B Accounts.<sup>2</sup>

6. After an investigation in 1992, the Securities and Exchange Commission (the “SEC”) filed a complaint against A&B, and Frank Avellino and Michael Bienes, individually, for operating an unregistered investment company.<sup>3</sup> As a result of this action, in November 1992, A&B was forced to close its operations and liquidate<sup>4</sup> the accounts it held with the IA Business.<sup>5</sup>

7. After the A&B Accounts at BLMIS were closed in November 1992, many former investors of A&B opened accounts directly with the IA Business. Frank Avellino, Michael

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<sup>1</sup> The A&B Accounts include the following seven BLMIS customer accounts:

- 1A0045 under the name “AVELLINO & BIENES”
- 1A0046 under the name “AVELLINO & BIENES PENSION PLAN & TRUST”
- 1A0047 under the name “AVELLINO & BIENES SPECIAL”
- 1A0048 under the name “AVELLINO & BIENES #2”
- 1A0049 under the name “AVELLINO & BIENES #3”
- 1A0050 under the name “AVELLINO & BIENES #4
- 1A0053 under the name “AVELLINO & BIENES #5”

Two personal BLMIS customer accounts were associated with Frank Avellino and Michael Bienes but are excluded from the A&B Accounts for purposes of my report – 1A0051 under the name “FRANK J AVELLINO TRUSTEE” and 1B0018 under the name “DIANE K BIENES.”

<sup>2</sup> See SEC v. Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes, Complaint for Preliminary and Permanent Injunctive and Other Equitable Relief (the “SEC Complaint”) (SECSFA0003573 – 587 at 573, 576 – 577). See also testimony of Frank Avellino and Michael Bienes to the SEC on July 7, 1992, 35:1 – 39:8 (10-05421\_BHScanned\_Daley\_0012154 – 58); deposition of Frank Avellino, 15:5 – 15:20, 22:24 – 24:11, 25:8 – 26:1, Nov. 20, 2019.

<sup>3</sup> See SEC Complaint (SECSFA0003573 – 587).

<sup>4</sup> I use the term “liquidate” (or “liquidated,” or “liquidation”) here and throughout my report to refer to BLMIS transferring funds to A&B in November 1992 approximately equal to the remaining purported balances in the A&B Accounts. The sources of funds that BLMIS used to pay A&B that I identified based on my forensic analysis, as described in this report, did not include the sale of any securities purportedly held in the A&B Accounts.

<sup>5</sup> See SEC v. Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes, Order of Preliminary Injunction and Other Equitable Relief on Consent and Consents of Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes to Order of Preliminary Injunction and Other Equitable Relief (SECSEP0000391 – 422 at 391 – 406).

Bienes and their family members also created various entities that opened BLMIS customer accounts to invest with the IA Business (the “A&B Entity Accounts”).<sup>6</sup>

### III. SCOPE OF ASSIGNMENT

8. On December 15, 2008, Irving H. Picard was appointed as the Trustee for the liquidation of the business of BLMIS, and Baker & Hostetler LLP was retained as his counsel. Shortly thereafter, FTI was retained by Baker & Hostetler LLP, on behalf of the Trustee, to analyze, among other things, the financial affairs of BLMIS and to assist the Trustee with the liquidation of BLMIS. As part of our engagement, FTI was tasked with the exercise of reconstructing the books and records of BLMIS, including all records of the cash transactions related to the BLMIS IA Business customer accounts as far back as the records allow.

9. This report should be read in conjunction with my Expert Report regarding the Reconciliation of Cash Transactions for All BLMIS Customers and Analysis of IA Business Cash Activity dated January 16, 2019 (the “Collura January 2019 Report”).<sup>8</sup>

10. For this report, I was specifically tasked with performing forensic analyses related to the following:

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<sup>6</sup> The A&B Entity Accounts include the following BLMIS customer accounts:

- 1ZA879 under the name “KENN JORDAN ASSOCIATES” (prior to April 1998, the name on this account was “KENNETH JORDAN NO 3” – *see* AMF00022564)
- 1ZB032 under the name “MAYFAIR VENTURES”
- 1ZB046 under the name “GROSVENOR PARTNERS LTD”
- 1ZB249 under the name “MAYFAIR BOOKKEEPING SERV INC MAYFAIR PENSION PLAN” (prior to January 2000, the name on this account was “MAYFAIR PENSION PLAN” – *see* AMF00055016)
- 1ZB262 under the name “STRATTHAM”
- 1ZB509 under the name “ASTER ASSOCIATES”
- 1ZB510 under the name “ST JAMES ASSOCIATES”

<sup>7</sup> *See* AMF00022587, AMF00022564 – 65, Bienes-3030 – 51, Bienes-2512 – 43, AMF00055060, MAYFAIR-1338 – 39, MAYFAIR-1538, SPG0000636 – 86, AMF00066530, AMF00066567. *See also* deposition of Frank Avellino, 83:5 – 83:22, Nov. 20, 2019.

<sup>8</sup> My findings and conclusions rendered in the Collura January 2019 Report, along with the accompanying Exhibits to that report, are all incorporated by reference herein. All capitalized terms that are defined in the Collura January 2019 Report shall have the same meaning in this report.

- **Assignment I:** Determine (i) what the balances in bank accounts used by the IA Business were prior to the liquidation of the A&B Accounts in November 1992 (during the late 1980s and early 1990s); and (ii) how the IA Business funded payments totaling \$457 million to A&B in November 1992 to close the A&B Accounts following an investigation of A&B by the SEC.
- **Assignment II:** Compare the composition of the cash deposits into BLMIS from customers of the IA Business before and after the A&B Accounts were closed in 1992.
- **Assignment III:** Determine (i) whether the cash deposit and withdrawal transactions reflected on the customer statements for the A&B Entity Defendants'<sup>9</sup> customer accounts at BLMIS (the "A&B Entity Accounts," as defined above) reconciled to available documentation; (ii) whether the cash withdrawals (*i.e.*, transfers from BLMIS) reflected on the customer statements for the A&B Entity Accounts (the "Initial Transfers") during the period between and including January 1, 2001 and December 11, 2008 (the "Post January 2001 Period") could be traced to bank accounts held by the A&B Entity Defendants; and (iii) whether there was commingling of funds in bank accounts held by the A&B Entity Defendants that received BLMIS funds.
- **Assignment IV:** Determine whether any of the Initial Transfers of BLMIS funds received by the A&B Entity Defendants during the Post January 2001 Period were

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<sup>9</sup> The A&B Entity Defendants include Aster Associates ("Aster"), Grosvenor Partners, Ltd. ("Grosvenor"), Kenn Jordan Associates ("Kenn Jordan"), Mayfair Bookkeeping Services, Inc. ("Mayfair Bookkeeping"), Mayfair Ventures, G.P. ("Mayfair"), St. James Associates ("St. James"), and Strattham Partners ("Strattham") (collectively, the "A&B Entity Defendants").

subsequently transferred to any of the A&B Subsequent Transferee Defendants<sup>10</sup>  
(the “Subsequent Transfers”).

11. This report has been prepared in connection with the above-captioned litigation and is to be used only for the specific purposes of this lawsuit. It is not to be used for any other purpose without the express written consent of FTI. If called upon to testify in this matter, I intend to provide testimony regarding my analyses and conclusions consistent with this report.

12. FTI is being compensated at a rate of \$800 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI’s fees are not contingent on the conclusions reached in this report or the outcome of the above-captioned litigation.

#### IV. SUMMARY OF FINDINGS

13. Based on the forensic analyses that I performed, as well as my skills, knowledge, experience, education and training that I applied to the documents and information available to me as of the date of this report, my findings are summarized as follows:

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<sup>10</sup> The A&B Subsequent Transferee Defendants include the A&B Entity Defendants (as defined above) along with the Non-A&B Entity Defendants, which include the following: 27 Cliff, LLC, Ascent, Inc., Dianne K. Bienes, Frank J. Avellino, Heather C. Lowles, Heather Carroll Lowles Trust U/A dated June 29, 1990, Madison Alyssa McEvoy Trust U/A dated June 29, 1990, Melanie A. Lowles, Melanie Ann Lowles Trust U/A dated June 29, 1990, Nancy C. Avellino, Nancy Carroll Avellino Revocable Trust under Trust Agreement dated May 18, 1992, Rachel A. Rosenthal, Rachel Anne Rosenthal Trust #3, Rachel Anne Rosenthal Trust U/A dated June 29, 1990, S.A. Grantor Retained Annuity Trust, Taylor Ashley McEvoy Trust U/A dated June 24, 1992, the Avellino Family Foundation, Inc., the Estate of Michael S. Bienes, Thomas G. Avellino, and Tiffany Joy Lowles Trust U/A dated June 29, 1990 (collectively, the “Non-A&B Entity Defendants” and together with the A&B Entity Defendants, the “A&B Subsequent Transferee Defendants”). Defendant Michael S. Bienes died during the pendency of this action on April 5, 2017. The Estate of Michael S. Bienes and Dianne K. Bienes, in her capacity as Personal Representative for the Estate of Michael S. Bienes, were substituted as defendants for Michael S. Bienes. *See* Stipulation and Order dated November 16, 2017, Adv. No. 10- 05421 (SMB), ECF No. 170. Further, the original defendant in this adversary proceeding, S.A., a minor, was dismissed on February 1, 2019. *See* Stipulation and Order Dismissing Defendant dated February 1, 2019, Adv. No. 10- 05421 (SMB), ECF No. 183. In addition, other defendants in this action include Avellino & Bienes Pension Plan and Trust, Avellino Family Trust, Frank J. Avellino Grantor Retained Annuity Trust Agreement Number 2 Under Agreement dated June 24, 1992, Frank J. Avellino Grantor Retained Annuity Trust under Agreement dated June 24, 1992, Frank J. Avellino Revocable Trust Number One as amended and restated January 26, 1990, as Amended, and Frank J. Avellino Revocable Trust Number One under the Declaration of Trust Number One dated June 10, 1988, as Amended.



### **Assignment I**

- Based on my examination of available bank records and BLMIS handwritten ledgers, I have concluded that, for the majority of the time during the late 1980s and early 1990s, balances in the IA Business bank accounts were negative, or overdrawn. Specifically, I determined that the average balance in the 703 Account was negative or just slightly above zero for the majority of the time during the period from February 1988 to October 1992, and the combined average balance in both the 703 Account and the BT Account reflected a similar trend of a negative, or just above zero, balance from December 1990 to October 1992.
- At the beginning of November 1992, the balance in the 703 Account was negative, or overdrawn. Later that month, BLMIS transferred approximately \$457 million to A&B to close the A&B Accounts. The source of funds used by BLMIS to transfer this \$457 million to A&B did not come from existing funds in the IA Business bank accounts, but rather came from the following sources:
  - i. BLMIS obtained more than \$180 million in loans from third-party financial institutions, with at least \$56 million of these loans obtained by BLMIS using IA Business customers' securities as its *own* collateral
  - ii. "Round-tripping" of more than \$100 million of funds from BLMIS to A&B, to certain A&B investors, who almost immediately transferred those funds back to BLMIS; and
  - iii. More than \$200 million deposited into BLMIS in November 1992 by certain other customers of the IA Business.

### **Assignment II**

- My analysis of the cash deposits into the IA Business shows that the groups of customers from which these deposits came changed over time from before the liquidation of the A&B Accounts in November 1992, to after the liquidation, through the end of 2008. From the 1980s through 1992, the A&B Accounts provided a significant source of deposits into BLMIS until these accounts were closed. Shortly after the A&B

Accounts were closed in November 1992, former clients of A&B began to open direct accounts with BLMIS, providing significant cash deposits into the IA Business from November 1992 through 1993. Beginning in the mid-1990s, Feeder Funds (as defined below) became a primary source of customer funds into BLMIS, providing a steady stream of funds to the IA Business, which lasted through the collapse of BLMIS in 2008.

### **Assignment III**

- For my reconciliation analysis, I analyzed the cash transactions in the A&B Entity Accounts from January 1993 to December 2008. During this time period, the customer statements for the A&B Entity Accounts reflected 298 cash withdrawal transactions. I reconciled 289 (or approximately 97%) of the cash transactions reflected on the customer statements for the A&B Entity Accounts to available BLMIS bank records, documentation contained in BLMIS customer files, and/or accounting records and defendant Frank Avellino's laptop files produced to the Trustee related to the A&B Entity Accounts. I was unable to reconcile the remaining cash transactions reflected on the customer statements for the A&B Entity Accounts due to the unavailability of records related to transactions dated between March 1993 and June 1995. However, defendant Frank Avellino testified that he reviewed the customer statements for the A&B Entity Accounts every month, and based on my review of documents contained in the customer files maintained at BLMIS for the A&B Entity Accounts, I have not found any instance of the A&B Entity Defendants or Non-A&B Entity Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the A&B Entity Accounts.
- For my tracing analysis, I analyzed the cash withdrawals (*i.e.*, Initial Transfers) from the A&B Entity Accounts during the Post January 2001 Period, totaling \$104,205,000. Based on available bank records from BLMIS and bank records produced to the Trustee by third-party financial institutions, I traced 100% of the total amount of cash withdrawals reflected on the customer statements for the A&B Entity Accounts during the Post January 2001 Period to bank accounts held by six of the A&B Entity Defendants – Aster

Associates, Grosvenor Partners, Ltd., Kenn Jordan Associates, Mayfair Ventures, G.P., St. James Associates, and Strattham Partners.

- Based on my analysis of activity in nine bank accounts held by the A&B Entity Defendants that received BLMIS funds, I determined that there were sources of funds other than from BLMIS, and therefore, commingling of funds in all nine bank accounts.

#### **Assignment IV**

- I identified a total of \$86,061,779 in transfers to the A&B Subsequent Transferee Defendants during the Post January 2001 Period from bank accounts held by the A&B Entity Defendants that received BLMIS funds. By applying five tracing methods that forensic accountants use to trace funds through commingled bank accounts, I identified the following ranges of Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants:

A&B Subsequent Transferee Defendant(s)	Total Transfers from A&B Entity Defendants	LOW end of Range of Subsequent Transfers	HIGH end of Range of Subsequent Transfers
Michael Bienes and/or Dianne Bienes	\$34,612,379	\$33,192,543	\$34,502,502
Frank Avellino and/or Nancy Avellino	\$26,805,977	\$22,621,864	\$24,364,461
A&B Entity Defendants	\$12,520,000	\$7,424,194	\$7,842,406
Thomas Avellino	\$5,846,507	\$2,785,960	\$3,097,660
Ascent, Inc	\$2,693,816	\$1,151,071	\$1,383,896
The Avellino Family Foundation	\$2,640,000	\$2,100,000	\$2,280,594
Other A&B Subsequent Transferee Defendants	\$943,100	\$570,217	\$695,681
<b>TOTAL</b>	<b>\$86,061,779</b>	<b>\$69,845,850</b>	<b>\$74,167,200</b>

14. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

## V. BALANCES IN IA BUSINESS BANK ACCOUNTS IN LATE 1980s / EARLY 1990s

### A. OVERVIEW, SOURCES OF INFORMATION AND METHODOLOGY

15. I was asked to determine what the balances in bank accounts used by the IA Business (*i.e.*, the 703 Account and the BT Account)<sup>11</sup> were in the late 1980s and early 1990s - before and after the liquidation of the A&B Accounts in November 1992. To do this, I reviewed four sources of available information found among BLMIS's books and records – each reflecting that for a majority of the time between 1988 and 1992, the balance in the primary bank account used by the IA Business, the 703 Account, was negative, meaning the account was overdrawn.

16. The four sources of information found in BLMIS's books and records that identified the balance in the IA Business bank accounts in the late 1980s to early 1990s include:

1) Customer Service Analysis reports for the 703 Account generated by Manufacturers Hanover Trust Company (“Manufacturers Hanover”), a third-party financial institution; 2) Available Balances reports for the 703 Account, also generated by Manufacturers Hanover; 3) a Statement of Overdraft Interest Advice, also generated by Manufacturers Hanover; and 4) Handwritten Ledgers prepared by BLMIS employees that reflect daily balances in the 703 Account and the BT Account.

### **Manufacturers Hanover Customer Service Analysis Reports for the 703 Account Reflect a Negative Average Available Bank Balance from 1987 to February 1989**

17. The Customer Service Analysis report from Manufacturers Hanover identifies the “Average Available Balance” in the 703 Account by month. This report was found in BLMIS's records for January 1989 and February 1989.<sup>12</sup> As shown in **Figure 1** below, the report for

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<sup>11</sup> As detailed in the Collura January 2019 Report, the IA Business primarily used three bank accounts for customer deposits and withdrawals during the Ten Year Period – the 703 Account, the 509 Account and the BT Account. The 509 Account consisted solely of daily transfers from the 703 Account in amounts equal to the total amount of checks clearing the 509 Account on that day. See Collura January 2019 Report, paras. 17 and 25.

<sup>12</sup> See MADWAA00012481 and MADWAA00012583.

January 1989 reflects a *negative* average available balance in the 703 Account for each month back to February 1988, as well as a *negative* average available balance for the year 1987.

**FIGURE 1**  
**Customer Service Analysis Report for the 703 Account**

02/20/89

MANUFACTURERS HANOVER TRUST COMPANY  
CUSTOMER SERVICE ANALYSIS  
ACCOUNT HISTORY  
JANUARY 1989

PAGE 3  
PROFIT CENTER 44211

ACCOUNT: BERNARD L MADOFF

MONTH	AVERAGE LEDGER BALANCE	WEIGHTED AVERAGES		ADJ. AVAIL. NET OF RESERVES		BALANCE DEFICIENCY FEES RECEIVED	TT&L DEPOSITS CREDITED	RES RATE	ECR	IN DOLLARS PRICE OF FEE SERVICES
		AVERAGE AVAILABLE BALANCE	AVERAGE ADJUSTED AVAILABLE BALANCE	PRIOR TO SERVICES	AFTER SERVICES					
01/89	1,622,098	1,566,543-	1,586,543-	1,632,462-	1,734,665-		0	12.00%	08.10%	0
12/88	760,944	2,083,535-	2,083,535-	2,107,079-	2,183,058-		0	12.00%	07.73%	0
11/88	1,015,688	3,368,382-	3,368,382-	3,368,382-	3,441,307-		0	12.00%	07.46%	0
10/88	1,256,918	3,095,841-	3,095,841-	3,118,499-	3,201,173-		0	12.00%	07.21%	0
09/88	969,187	3,021,978-	3,021,978-	3,024,495-	3,118,017-		0	12.00%	07.01%	0
08/88	421,652	3,758,792-	3,758,792-	3,763,793-	3,842,446-		0	12.00%	06.79%	0
07/88	1,490,947	1,690,765-	1,690,765-	1,734,487-	1,823,772-		0	12.00%	06.50%	0
06/88	1,916,385	1,635,195-	1,635,195-	1,648,461-	1,751,008-		0	12.00%	06.25%	0
05/88	635,403	3,515,992-	3,515,992-	3,517,619-	3,606,528-		0	12.00%	06.01%	0
04/88	1,468,135	1,760,364-	1,760,364-	1,790,038-	1,932,711-		0	12.00%	05.76%	0
03/88	829,105	1,386,014-	1,386,014-	1,423,243-	1,515,676-		0	12.00%	05.75%	0
02/88	713,921	1,858,339-	1,858,339-	1,872,169-	1,972,013-		0	12.00%	05.80%	0
LAST 12 MONTHS	1,099,220	2,397,517-	2,397,517-	2,419,253-	2,515,045-		0			0
AVERAGE 1988	1,015,497	2,446,297-	2,446,297-	2,463,973-	2,558,124-		0			0
AVERAGE 1987	2,150,573	111,935-	111,935-	209,081-	305,940-		0			0

CUSTOMER ID: MADOFF

ACCOUNT NUMBER: Redacted 703

MADWAA00012481

CUSTOMER ID: MADOFF

ACCOUNT NUMBER: Redacted 703

**Manufacturers Hanover Available Balances Reports from January 1989 to July 1990 Show the 703 Account was Frequently Negative**

18. The Available Balances report is another report from Manufacturers Hanover Trust Company that identifies the daily available balance in the 703 Account during the month, as well as a monthly average available balance. This report was found in BLMIS's records for January 1989 to July 1990.<sup>13</sup> As shown in **Figure 2** below, the report for June 1990 reflects a negative daily available balance in the 703 Account, identified by "OD" (for overdraft) next to

<sup>13</sup> I was unable to locate the Available Balances report for the following months within this time period: November 1989, February 1990, and March 1990.

the balance for all but two days during the month, and an average available balance for the month of *negative* \$3.3 million.

**FIGURE 2**  
**Available Balances Report for the 703 Account**

REPORT 410 RUN DATE 07/07/90 MANUFACTURERS HANOVER TRUST COMPANY CLOSE OF BUSINESS  
BRANCH/DEPT 140 AVAILABLE BALANCES 07/06/90 (FRI)  
ORG LEVEL: 44211  
Redacted1703 AVERAGES FOR 06/90  
BERNARD L MADOFF  
BOOK BALANCE 4,233,349+  
DEPOSIT FLOAT 7,718,345-  
NON-DEPOSIT FLOAT 155,105+  
AVAILABLE BALANCE 3,329,891-  
DAILY AVAILABLE BALANCE TO NEAREST THOUSAND  
MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY  
06/04 3091 OD 06/05 4325 OD 06/06 1586 OD 06/07 2701 OD 06/08 4158 OD  
06/11 3159 OD 06/12 2271 OD 06/13 1534 OD 06/14 2572 OD 06/15 3718 OD  
06/18 8027 OD 06/19 3873 OD 06/20 5621 OD 06/21 5318 OD 06/22 5248 OD  
06/25 3233 OD 06/26 5360 OD 06/27 4912 OD 06/28 3192 OD 06/29 4913 OD  
MADWAA00012259

**Manufacturers Hanover Statement of Overdraft Interest Advice for October 1990 Shows an Overdraft Position for the 703 Account**


19. The Statement of Overdraft Interest Advice is also a report from Manufacturers Hanover Trust Company that identifies the available balance in the 703 Account by day. This report was found in BLMIS's records only for the month of October 1990.<sup>14</sup> As shown in Figure 3 below, the report for October 1990 reflects a negative daily available balance in the 703 Account for each day in October 1990 (again, a negative balance identified by "OD" next to each amount).

<sup>14</sup> See MADWAA00012207.

**FIGURE 3**  
**Statement of Overdraft Interest Advice**

ACCOUNT NO.  
Redacted 8700

BERNARD L. MADOFF  
ATTN: TONY TILLETNICK  
885 THIRD AVENUE-18TH FLOOR  
NEW YORK NY 10022



**MANUFACTURERS TRUST COMPANY**  
UNREDACTED ACCOUNT DEPARTMENT  
4 NEW YORK PLAZA \* NEW YORK, NEW YORK 10004

PAGE NO.  
1 OF 1

COVERING THE PERIOD OF  
OCTOBER 1, 1990 - OCTOBER 31, 1990  
INCLUDING BACK VALUE TRANSACTIONS  
POSTED THRU NOVEMBER 6, 1990

**STATEMENT OF OVERDRAFT INTEREST ADVICE** NOTE: ALL DAILY BALANCES TO NEAREST THOUSAND

DATE	ACCOUNT NO. 140-0-80700	ACCOUNT NO. 140-0-81535	ACCOUNT NO. 140-0-81543	ACCOUNT NO. 140-0-81703	ACCOUNT NO.	ACCOUNT NO.	DAILY NET ADJ AVL BAL	ODI 94TF	DAILY ODI CHARGES
10/01	25	15	71	30500			19400	9.2500000	49.76
10/02	19	13	229	18400			78	9.3200000	.00
10/03	269	10	196	1,81700			1,34300	9.7100000	362.15
10/04	158	67	158	4,71800			4,33400	9.3100000	1,128.90
10/05	322	36	151	3,60100			3,09300	9.1900000	789.51
10/06	322	36	151	3,60100			3,09300	9.1900000	789.51
10/07	322	36	151	3,60100			3,09300	9.1900000	789.51
10/08	322	36	151	3,60100			3,09300	9.1900000	789.51
10/09	362	19	132	5,76200			5,24900	9.2100000	1,342.87
10/10	279	8	122	5,55400			5,14600	9.1100000	1,302.12
10/11	125	52	166	6,02500			5,68300	9.0200000	1,423.82
10/12	62	39	71	7,05900			6,88700	8.9800000	1,717.90
10/13	62	39	71	7,05900			6,88700	8.9800000	1,717.90
10/14	62	39	71	7,05900			6,88700	8.9800000	1,717.90
10/15	121	21	63	5,77500			5,57000	9.0700000	1,403.35
10/16	272	11	306	5,40800			4,81100	9.0100000	1,204.17
10/17	581	7	289	2,46200			1,66500	8.6900000	402.03
10/18	312	47	150	7,00900			6,50000	9.0400000	1,632.19
10/19	162	37	462	6,30800			5,64000	9.0100000	1,411.45
10/20	162	37	462	6,30800			5,64000	9.0100000	1,411.45
10/21	162	37	462	6,30800			5,64000	9.0100000	1,411.45
10/22	295	16	366	6,39200			5,71500	8.9900000	1,427.10
10/23	329	11	235	5,43200			4,85700	8.9300000	1,204.82
10/24	76	7	177	5,78500			5,52400	8.9400000	1,371.88
10/25	104	50	162	4,99500			4,67900	9.0200000	1,172.35
10/26	117	23	156	3,99900			3,70300	8.9700000	922.60
10/27	117	23	156	3,99900			3,70300	8.9700000	922.60
10/28	117	23	156	3,99900			3,70300	8.9700000	922.60
10/29	161	14	42	7,09300			6,85500	8.8700000	1,608.96
10/30	516	11	18	6,17200			5,62700	8.8400000	1,381.82
10/31	125	7	43	3,87400			3,69900	10.5200000	1,080.79

CALCULATED CHARGE 34,884.97

MANUAL POSTINGS .00

WE HAVE DEBITED YOUR ACCOUNT 34,884.97

PLEASE EXAMINE THIS CONSOLIDATED STATEMENT AND THE RELATED OVERDRAFT INTEREST STATEMENTS AT ONCE  
Any inquiries regarding these statements should be addressed to the UNREDACTED ACCOUNTING DEPARTMENT. Kindly enclose a photocopy of the statements and debit or credit in question.

**Handwritten Ledgers of IA Business Bank Accounts from December 1990 to October 1992**  
**Show the IA Business had a Frequent Negative Cash Balance**

20. Also found among BLMIS's books and records were Handwritten Ledgers (also referred to as "check cards") that were maintained by BLMIS employees and contained multiple days' worth of activity, including BLMIS customer cash activity, on a single page, with the specific activity from each day handwritten on one line, along with the ending balance for the day. There were separate Handwritten Ledgers for activity in a "Manufacturers

Hanover” account that represented daily activity and daily balances in the 703 Account.<sup>15</sup>

These Handwritten Ledgers were found in BLMIS’s records back to December 14, 1990.

21. Based on my reconciliation of these Handwritten Ledgers to available BLMIS bank records during the Ten Year Period (December 1998 – December 2008), as described in further detail in the Collura January 2019 Report, I concluded that these handwritten documents can be relied upon as an indication of BLMIS cash activity in the absence of BLMIS bank records during the period prior to December 1998.

22. Further, BLMIS employees used the balance reflected on the Handwritten Ledgers to perform a monthly bank reconciliation of the balance in the 703 Account.<sup>16</sup> BLMIS employee Jo Ann Crupi testified in this action that this monthly reconciliation was being performed as far back as 1984.<sup>17</sup>

23. For the period August 20, 1991 to September 11, 1991, as shown in **Figure 4** below, Handwritten Ledgers maintained by BLMIS employees reflect that the 703 Account had a negative balance for almost this entire period – represented as “negative” by the brackets around the amounts under the “Balance” column<sup>18</sup> – for each day during this period, except for one.

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<sup>15</sup> Deposition of Jo Ann Crupi, 109:8 – 113:8, Jan. 30, 2020.

<sup>16</sup> See Collura January 2019 Report, para. 42.

<sup>17</sup> Deposition of Jo Ann Crupi, 120:8 – 121:13, Jan. 30, 2020.

<sup>18</sup> Deposition of Jo Ann Crupi, 113:10 – 113:17, Jan. 30, 2020.



**FIGURE 4**  
**Example of BLMIS Handwritten Ledger**

MANUFACTURERS HANOVER				DATE	BALANCE
CKS OUT	TRAN	WIRE	MY DEPOSIT	Tony Deposit	
4647809.55	1700.00	900.00	7500.00	2000.00	8/2 (4313251.09)
4935061.47	3900.00	700.00	0	0	8/2 (4948312.36)
3792986.84	4900.00	0	0	0	8/2 (3841299.10)
5621272.72	2900.00	5500.00	1000.00	0	8/23 (5404571.87)
4890213.86	2700.00	1000.00	6486299	0	8/26 (4846160.79)
5155484.83	3700.00	4600.00	3800.00	0	8/27 (5501645.62)
5492499.11	0	5100.00	0	0	8/28 (5894144.73)
2503414.47	4000.00	0	8200.00	8100.00	8/29 (2717947.93)
181378.69	0	0	61892.14	2600.00	8/30 319365.52
5468122.20	4000.00	4998.00	366198.33	0	9/3 (4192538.55)
5705779.13	5000.00	1200.00	227496.41	0	9/4 (5870841.07)
4955133.10	4000.00	4000.00	10600.00	0	9/5 (10720574.19)
5476965.64	4600.00	6000.00	17500.00	0	9/6 (5422539.83)
593798.13	3984.42	0	3000.00	1000.00	9/9 (5676513.69)
17876522.11	4000.00	5000.00	3300.00	4000.00	9/10 (4334185.90)
7051567.38	4000.00	4870.00	3002.19	4000.00	9/11 (458558.34)

24. For purposes of my analysis of the balances in bank accounts used by the IA Business in the late 1980s and early 1990s, I also reviewed available records related to the BT Account. These records included Handwritten Ledgers labeled “Bankers Trust” that were available from BLMIS’s records back to December 1990 and reflected daily balances in the BT Account – the average balance ranging from less than \$1 million to \$13 million, as discussed further below.

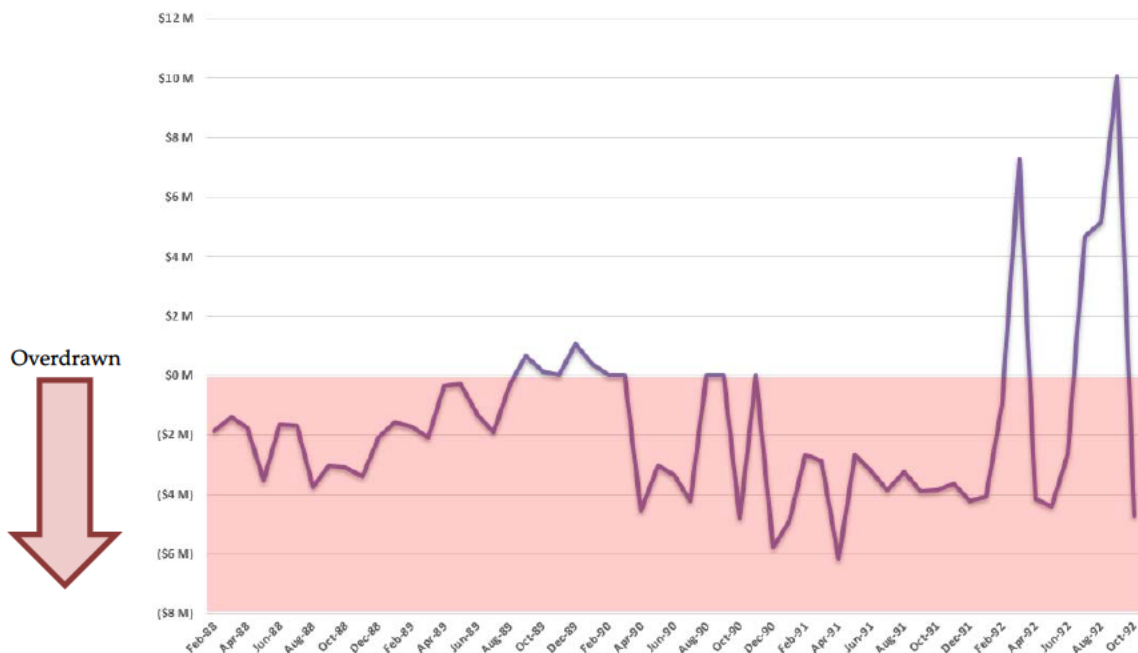
B. BALANCES IN IA BUSINESS BANK ACCOUNTS WERE OVERDRAWN IN THE LATE 1980s TO EARLY 1990s

25. Based on my review of the available records listed above, I determined that from the late 1980s to the early 1990s, the average balance in the 703 Account was negative, meaning the account was overdrawn, for the majority of the time. **Figure 5** below is a graphical depiction of my findings, showing that, for the majority of the time during the period February

1988 to October 1992, the average balance in the 703 Account was negative or just slightly above zero. *See also Exhibit 3.*

26. Moreover, there were only two times during the period from February 1988 to October 1992 when the average balance in the 703 Account grew to near or just over \$10 million (\$7.3 million and \$10.1 million in March 1992 and September 1992, respectively), but then decreased again to a *negative* average balance by the next month.

**FIGURE 5**  
**Average Balance in the 703 Account**  
**February 1988 – October 1992**



27. With respect to the BT Account, from December 1990 to October 1992, the average balance in the BT Account was approximately \$3.3 million.<sup>19</sup> *See Exhibit 3.* Further, based on my analysis, after combining the average balances of both the 703 Account and the BT Account

<sup>19</sup> This average excludes one month when the average balance was approximately \$13 million (in March 1992), when cash deposits during the month from one BLMIS customer, Norman Levy, were \$75 million. *See* MADTSS00255014 and MADTSS00255017.

for the period December 1990 to October 1992, the trend remained the same as shown in **Figure 5** above.<sup>20</sup>

28. In other words, I conclude that for the majority of the time between December 1990 and October 1992, the combined average balance in the 703 Account and the BT Account was negative or just slightly above zero, and that there were only two times during this period when the combined balance in these two IA Business bank accounts increased to \$20 million and \$14 million (in March 1992 and September 1992, respectively), but then decreased again to a *negative* average balance by the next month.

## **VI. SOURCES OF FUNDS USED BY BLMIS TO PAY \$457 MILLION TO A&B IN NOVEMBER 1992**

### **A. OVERVIEW AND METHODOLOGY**

29. As noted above, following the investigation into the operations of A&B by the SEC, A&B closed its operations and BLMIS closed A&B's IA Business customer accounts in November 1992. The customer statements for the A&B Accounts reflect that, between November 16 and November 23, 1992, BLMIS transferred a total of \$457,150,580 to A&B. *See Exhibit 4.1* for a list of the cash withdrawal transactions reflected on the customer statements for the A&B Accounts.

30. BLMIS made the following transfers to A&B in November 1992:

- approximately \$113 million on November 17, 1992, and
- approximately \$344 million on November 23, 1992.

A&B used the funds transferred from BLMIS to repay its investors, after which the SEC investigation was concluded.<sup>21</sup>

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<sup>20</sup> In addition to the 703 Account and the BT Account, as noted below in **Section VI** of this report, another account (defined below as the "700 Account") was also used during November 1992 for cash transactions reflected on customer statements for the A&B Accounts and certain other BLMIS customer accounts. Based on available records reflecting balances in the 700 Account, from February 1988 to October 1990, the average available balance ranged from \$19,000 to \$432,000. *See Exhibit 3.*

<sup>21</sup> *See* trial testimony of Frank DiPascali, 4702:17 – 4703:16. *See also* SECSFA0003842 – 50 *at* SECSFA0003842 – 43.

31. I was asked to review available records from the November 1992 time period to determine whether BLMIS had sufficient balances in the IA Business bank accounts to transfer \$457,150,580 to A&B in November 1992 and to determine what sources of funds BLMIS used for the transfers to A&B.

32. As part of my analysis, I reviewed a number of available records which included, but were not limited to:

- An envelope from BLMIS's records with "HOLD BLM Special" handwritten on the front, containing correspondence, copies of checks and deposits slips, and notes related to cash transactions and other activity in November 1992;
- Handwritten Ledgers maintained by BLMIS employees reflecting, among other things, customer cash deposit and withdrawal transactions, and daily balances in bank accounts used by the IA Business (discussed further in the Collura January 2019 Report);
- Bank reports reflecting activity in the 703 Account and other bank accounts dated in November 1992;
- Documents produced by the SEC to the Trustee related to the SEC's 1992 investigation of A&B;
- BLMIS customer statements; and
- Loan statements and other loan documentation.

33. Based on my review of these available records, I determined that BLMIS did not have sufficient cash balances in the IA Business bank accounts to transfer \$457,150,580 to A&B in November 1992. In fact, as shown above, for the majority of the time between February 1988 and October 1992, the IA Business bank accounts were negative, or overdrawn.

34. The following were the sources of funds that BLMIS used to transfer the approximately \$457 million to A&B in November 1992:

- i. BLMIS obtained more than \$180 million in loans from third-party financial institutions, and documentation exists demonstrating at least \$56 million

of these loans were obtained by BLMIS using IA Business customers' securities as its *own* collateral;

- ii. "Round-tripping" of more than \$100 million of funds from BLMIS to A&B, then to certain A&B investors, who then almost immediately transferred those funds back to BLMIS; and
- iii. More than \$200 million deposited into BLMIS in November 1992 by other customers of the IA Business.

**B. 703 ACCOUNT HAD A NEGATIVE BALANCE JUST PRIOR TO BLMIS'S PAYOUTS TO A&B**

35. As noted above, in November 1992, BLMIS transferred approximately \$457 million to A&B in connection with closing the A&B Accounts. Handwritten Ledgers prepared by BLMIS employees for the Manufacturers Hanover account (*i.e.*, the 703 Account) for the period October 27, 1992 to November 27, 1992 (*see Figure 6* below<sup>22</sup>) show that the balance in the 703 Account was negative as of the end of October 1992, and then began to increase by mid-November 1992, with sources of funds that I will describe further in this section of the report.

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<sup>22</sup> **Figure 6** reflects two documents – the first is included in its entirety (MADTSS00255026) and the second includes the relevant portion to show the time period from November 20 to November 27, 1992 (MADTSS00255031).

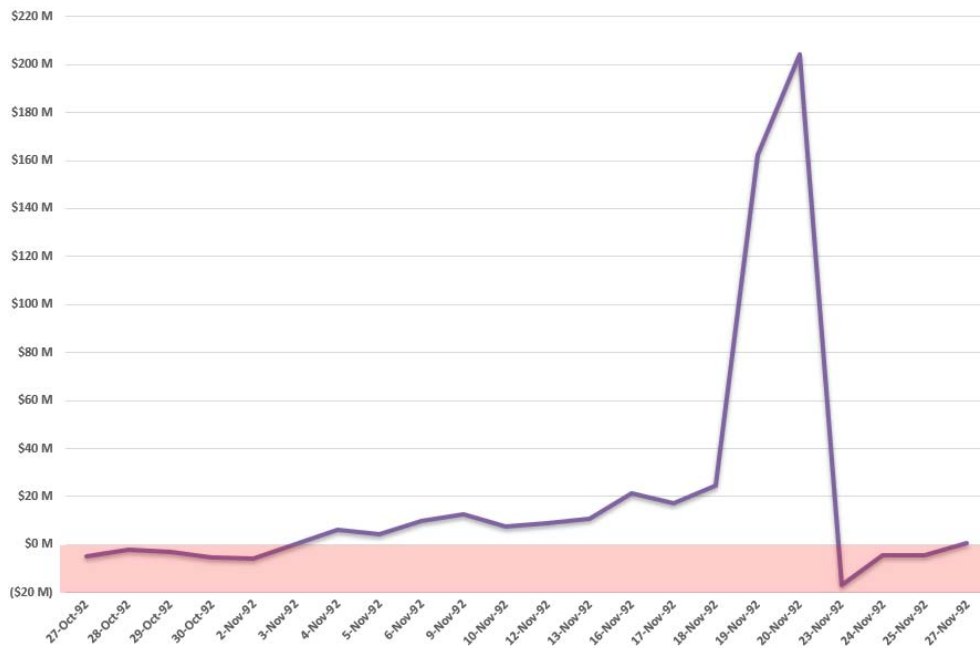
### FIGURE 6

MADTSS00255026, MADTSS00255031

36. The chart below (see **Figure 7**) represents the daily balances in the 703 Account as reflected on the Handwritten Ledgers shown in **Figure 6** above, and shows the trend in the balance of the 703 Account from negative as of the end of October 1992 to hundreds of millions of dollars just before the final payout of the approximately \$344 million to A&B on November 23, 1992.



**FIGURE 7**  
**Graph of Balances in 703 Account**  
**October 27, 1992 to November 27, 1992**



C. SOURCES OF FUNDS FOR THE \$113 MILLION PAID TO A&B ON NOVEMBER 17, 1992

37. On November 17, 1992, BLMIS transferred \$113 million to A&B. However, BLMIS Handwritten Ledgers reflect opening balances in the 703 Account and BT Account as of November 16, 1992, of only \$10,993,564 and \$4,130,797, respectively,<sup>23</sup> for a total of just over \$15 million, which was not nearly enough to make this \$113 million transfer to A&B.

38. Based on my review of available records, I determined that the \$113 million transferred to A&B on November 17, 1992 came from another bank account used by BLMIS – bank account #xxx-x-x0700 at Chemical Bank (which later became JPMorgan Chase) (the “700 Account”).<sup>24</sup>

<sup>23</sup> See MADTSS00255026; MADTSS00255030. During the first half of November 1992, the IA Business bank accounts received approximately \$55 million from BLMIS customers, including \$37 million from Norman Levy, and transferred approximately \$38 million to BLMIS customers during the same period.

<sup>24</sup> The \$113 million was transferred to A&B from the 700 Account in the form of two checks, which I reconciled to seven cash withdrawal transactions reflected on the customer statements for the A&B Accounts (see **Exhibit 4.1**).

39. As of November 16, 1992, the opening balance in BLMIS's 700 Account was only \$379,285,<sup>25</sup> which was insufficient to fund the transfer of \$113 million to A&B. I determined that additional funds were added to BLMIS's 700 Account totaling approximately \$121 million, in order to make the \$113 million payment to A&B on November 17, 1992. *See also Exhibit 4.2.* The sources of these funds included:

- \$41 million in loans from third-party financial institutions, including Bankers Trust, Chemical Bank, Bank of Tokyo, Continental Bank and French American Bank; and
- \$80 million from one BLMIS customer, Norman Levy.

D. SOURCES OF FUNDS FOR THE REMAINING \$344 MILLION PAID TO A&B ON NOVEMBER 23, 1992

40. After transferring \$113 million to A&B on November 17, 1992, BLMIS still had to pay another \$344 million to liquidate the remaining balances in the A&B Accounts. Based on available documents, including the Handwritten Ledgers and bank reports of activity in the 703 Account, I determined that the second distribution to A&B on November 23, 1992 totaling approximately \$344 million was transferred from the 703 Account.

41. Handwritten Ledgers for the 703 Account reflect a total of \$343.8 million of outflows marked as "BLM" on November 23, 1992.<sup>26</sup> In addition, available bank reports for the 703 Account reflect eight wire transfers to A&B totaling \$343.8 million on November 23, 1992.<sup>27</sup> However, as noted above, the Handwritten Ledgers for the 703 Account reflect a balance of only \$10,993,564 as of the beginning of November 16, 1992 – not nearly enough to fund the \$344 million transferred from BLMIS.

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<sup>25</sup> The bank report for the 700 Account containing the beginning balance in the account on 11/16/1992 was not available. The beginning balance of \$379,285 is based on the closing ledger balance in the account as of 11/16/1992 of \$113,903,556 less the inflows of \$121,200,000 plus the outflows of \$7,675,729 on 11/16/1992 (*see* MADTSS01328840 – 42).

<sup>26</sup> *See* MADTSS00255031.

<sup>27</sup> *See Exhibit 4.1* for details of the cash withdrawal transactions reflected on the BLMIS customer statements for the A&B Accounts during November 1992.



42. I have determined the following sources of funds were added to BLMIS's 703 Account from November 16, 1992 to November 23, 1992 to generate sufficient funds for BLMIS to transfer approximately \$344 million to A&B on November 23, 1992 (*see also Exhibit 4.3*):

- \$142.7 million in loans from third-party financial institutions, some of which were collateralized by securities held by customers of the IA Business, as discussed further below;
- \$105.5 million of "round-tripped" funds that were sent back to BLMIS from the first \$113 million transferred by BLMIS to A&B on November 17, 1992, also discussed further below;
- \$107.6 million in cash deposits from other customers of the IA Business, including \$50 million from Norman Levy; and
- \$26.3 million transferred from the BT Account, which received \$25 million from Norman Levy between November 16, 1992 and November 23, 1992.

43. Following the payments totaling \$343.8 million from BLMIS to A&B on November 23, 1992, A&B transferred \$329 million to its investors.<sup>28</sup>

**BLMIS Obtained Millions of Dollars in Loans Using Customer Securities as its Own Collateral to Fund the Second Distribution to A&B**

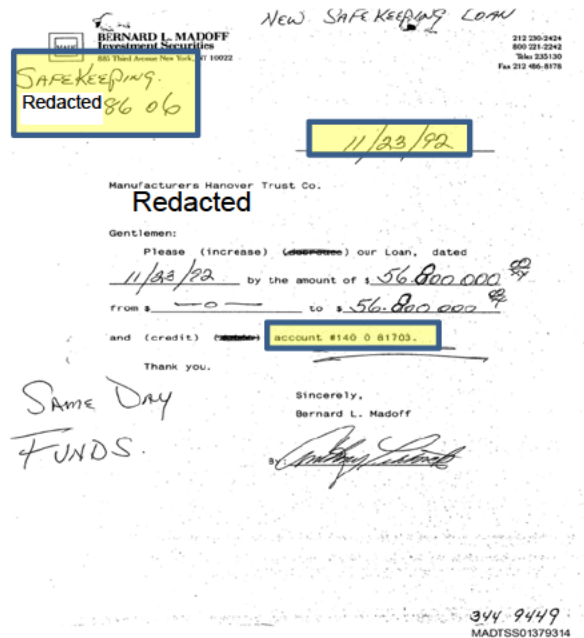
44. As noted above, BLMIS used \$142.7 million in loan proceeds it obtained from third-party financial institutions to fund a portion of the \$344 million it transferred to A&B on November 23, 1992. Among these loan proceeds was \$56.8 million that BLMIS obtained from Manufacturers Hanover. Based on my review and analysis of available documents found in BLMIS's records, I determined that BLMIS obtained this \$56.8 million loan by using as collateral securities that were owned not by BLMIS, but by BLMIS's customers.

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<sup>28</sup> See SECSFA0003842 – 50 at SECSFA0003842 – 44.

45. On November 23, 1992, BLMIS requested a \$56.8 million increase on a loan it had obtained from Manufacturers Hanover. See Figure 8 below. The letter BLMIS sent to Manufacturers Hanover contains a handwritten note "SAFEKEEPING N 70686."<sup>29</sup>

**FIGURE 8**  
**Letter re: \$56.8 Million Loan from Manufacturers Hanover Trust**



46. Based on my review of other documents found in BLMIS's records, account N 70686 held at Chemical Bank (which later became JPMorgan Chase) is a custody account held by Madoff (the "686 Custody Account") that received at least \$55 million in Treasury Notes and other securities from certain BLMIS customers (including Carl Shapiro and his family members, and Hadassah) between November 17, 1992 and November 20, 1992.<sup>30</sup> See Exhibit

<sup>29</sup> See MADTSS01379314.

<sup>30</sup> Documents that I reviewed included, but were not limited to, Free Transaction Activity Reports dated November 17 – 20, 1992, showing Treasury Notes and bonds that were received into the 686 Custody Account, transaction reports reflecting that many of the same Treasury Notes were delivered out of the 686 Custody Account on December 21, 1992, and a security statement reflecting the securities that remained in the 686 Custody Account as of December 31, 1992. See Exhibit 4.4.

4.4 for further detail. I have concluded that BLMIS used these securities owned by certain of its customers as its own “safekeeping” collateral for the \$56.8 million loan, as referred to in the handwritten note on the letter in **Figure 8** above.

47. I also determined that, during November 1992, BLMIS obtained another approximately \$86 million in loans from other banking institutions, including Bank of New York and Bankers Trust, among others, to generate sufficient cash to transfer the remaining \$344 million to A&B on November 23, 1992.

48. I have located documentation indicating that in November 1992, other customers transferred substantial amounts of securities to BLMIS – including \$76.2 million in securities that BLMIS customer, Jeffry Picower, transferred to BLMIS on November 16, 1992.<sup>31</sup> I was unable to locate documentation in BLMIS’s records that indicates whether BLMIS used these \$76.2 million in customer securities from Jeffry Picower as collateral to obtain any of the other \$86 million in loans BLMIS obtained in November 1992. However, testimony of former BLMIS employee, Frank DiPascali, supports that Madoff did use these securities transferred by Jeffry Picower as BLMIS’s own collateral to obtain loans from other financial institutions that were then used to pay out the remaining \$344 million to A&B.<sup>32</sup>

**Over \$100 Million “Round-tripped” from BLMIS’s First \$113 Million Transfer to A&B to Fund the Second Distribution to A&B**

49. After A&B received \$113 million from BLMIS on November 17, 1992, it distributed the funds to certain of its largest investors.<sup>33</sup> Between November 18 and November 20, 1992, these investors deposited \$105.5 million of funds with BLMIS and opened eight new customer accounts at BLMIS (the “Eight BLMIS Accounts”). See **Exhibit 4.5**.

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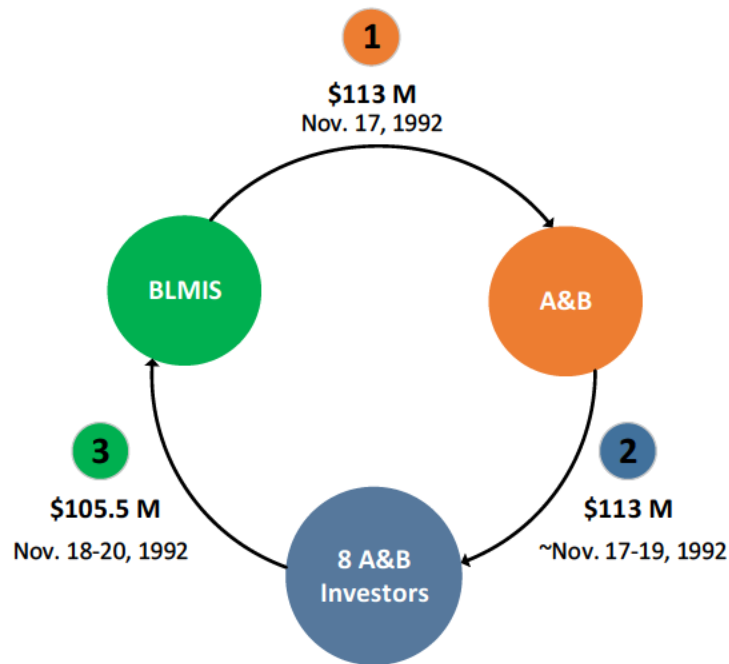
<sup>31</sup> See MADTSS01328794.

<sup>32</sup> See trial testimony of Frank DiPascali, 4705:18 – 4709:8.

<sup>33</sup> Based on a deposition of defendant Frank Avellino on 11/20/1992 (continued on 11/24/1992), A&B distributed approximately \$113M to certain of its investors that were “easy to wire” to and because of the “size of them” and also to prevent “anyone from complaining about any interest calculation up to the point of distribution if any.” Defendant Frank Avellino also testified that the “distribution was from proceeds that were received from” BLMIS. See SECSFA0003858 - 60 and SECSFA0003919 - 20.

50. As noted above, the \$105.5 million deposited into BLMIS by the former A&B investors to open the Eight BLMIS Accounts became part of the source of funds used by BLMIS to transfer \$344 million to A&B on November 23, 1992. This round-tripping of funds is depicted in **Figure 9** below.

**FIGURE 9**  
**Round-tripping of BLMIS Funds**



E. SUMMARY OF SOURCES OF FUNDS FOR THE \$457 MILLION PAID BY BLMIS TO A&B IN NOVEMBER 1992

51. Based on my analyses described above, I conclude that the source of funds for the transfers from BLMIS to A&B in November 1992 totaling \$457,150,580 to close the A&B Accounts did not come from existing funds in the IA Business bank accounts, nor did it come from the sale of any securities purportedly held in the A&B Accounts,<sup>34</sup> but rather came from the following sources:

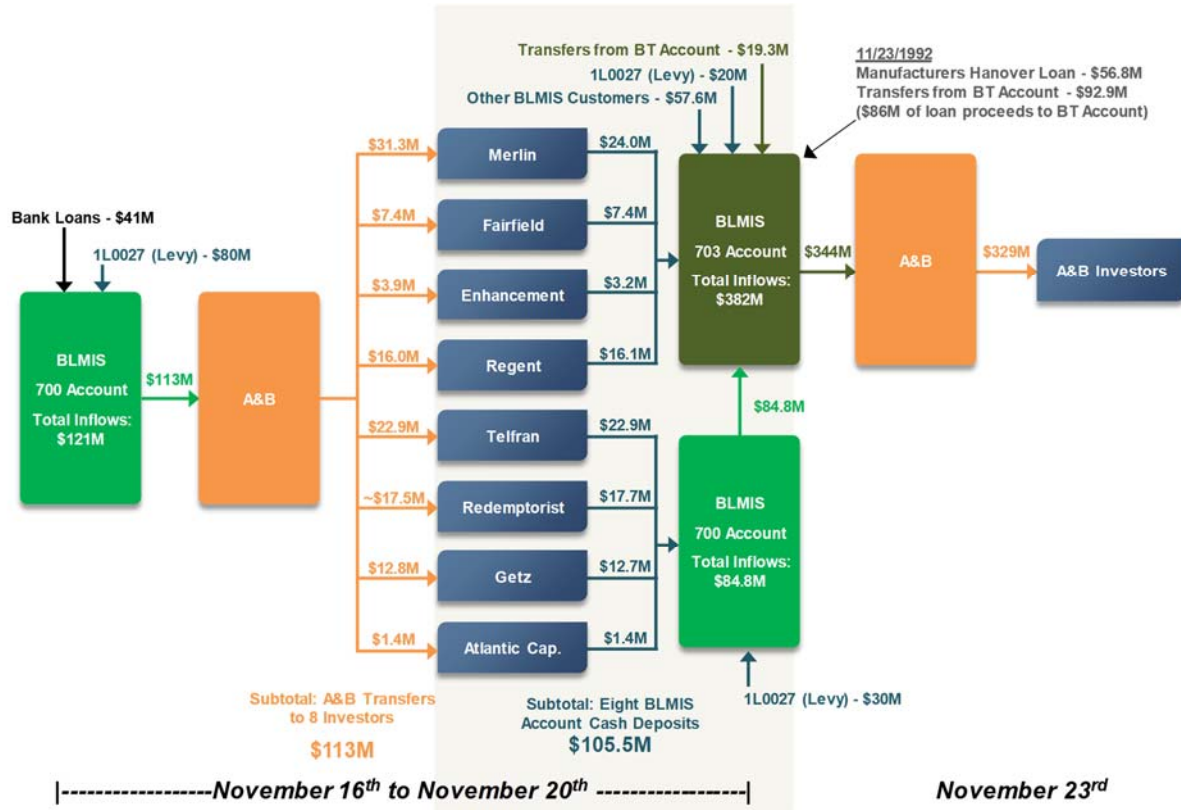
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<sup>34</sup> See also Collura January 2019 Report, para. 44.

- \$184 million in loans from third-party financial institutions, at least \$56 million of which was obtained by BLMIS using IA Business customers' securities as its *own* collateral;
- \$105.5 million round-tripped through the Eight BLMIS Accounts that were former A&B investors, who upon receipt of the \$113 million from BLMIS, then deposited \$105.5 million with BLMIS in November 1992; and
- \$213 million in cash deposits from other BLMIS customers, including \$155 million from BLMIS customer, Norman Levy.

52. **Figure 10** below summarizes the flows of funds through and between BLMIS and A&B during the period November 16 – 23, 1992.

**FIGURE 10**  
**Flowchart of November 1992 Activity**



## VII. COMPOSITION OF CASH DEPOSITS INTO THE IA BUSINESS

### A. OVERVIEW AND METHODOLOGY

53. I was asked to compare the composition of the cash deposits into BLMIS from IA Business customers before and after the A&B Accounts were closed in November 1992. To do this, I quantified the cash deposits by categories of BLMIS customer accounts, including 1) the seven A&B Accounts; 2) A&B investors who opened accounts with BLMIS after the A&B Accounts were closed in November 1992 (the "A&B Investor Accounts"); and 3) feeder fund accounts. I then analyzed the cash deposits of these three account groups as a percentage of

total cash deposits across all BLMIS customer accounts to determine the composition of cash deposits over time.

54. My analysis was based on the cash deposits reflected on BLMIS customer statements and compiled by FTI in a chronological listing of all cash and principal transactions, including cash deposit and withdrawal transactions, for every BLMIS customer account.<sup>35</sup> See further detail in the Principal Balance Calculation Report.

55. The first category of BLMIS customer accounts that I identified for my analysis is the seven A&B Accounts, as defined above.

56. The second category of BLMIS customer accounts that I identified for my analysis includes A&B investors who opened accounts with BLMIS after the A&B Accounts were closed in November 1992 (defined above as the “A&B Investor Accounts”). This category of customer accounts is based on account groups as internally assigned by BLMIS and as reflected in BLMIS’s books and records.<sup>36</sup> These account groups were documented in the “NAME/ADDR FILE MAINTENANCE” form that was included in BLMIS customer files,<sup>37</sup> and were also recorded in a data table within BLMIS’s AS400 system (the “A.Name” table). The A.Name table tracked customer accounts by group names, which were also identified in a BLMIS customized operating manual for the AS400 system (the “HOUSE 17 Manual”) found in BLMIS’s records.<sup>38</sup>

57. As tracked within the A.Name table, the A&B Investor Accounts are identified by the BLMIS customer accounts assigned the group names of “A&B-ALL,” “A&B-GM” and “A&B-Glantz.”<sup>39</sup> The “A&B-ALL” group includes the A&B Entity Accounts, among other

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<sup>35</sup> For my analysis, I excluded cancelled cash deposit transactions, inter-account transfers and non-cash deposits. I also excluded all cash deposit transactions in BLMIS customer account 1L0027 held by Norman Levy.

<sup>36</sup> Deposition of Jo Ann Crupi, 62:24 - 63:17, Jan. 30, 2020.

<sup>37</sup> See AMF00309423 for an example of this form that was included in the BLMIS customer file for one of the A&B Accounts (1A0045) identifying “Group Name” of “A&B.”

<sup>38</sup> See MADTSS00336552 – 54.

<sup>39</sup> My analysis includes cash deposits from the A&B Investor Accounts starting in November 1992.

BLMIS customer accounts. In addition, the Eight BLMIS Accounts are included in the A&B Investor Accounts category.<sup>40</sup>

58. The third category of BLMIS customer accounts that I identified for my analysis is feeder fund accounts (“Feeder Funds”). I use the term Feeder Funds to mean funds that pool assets of various investors to invest into one investment vehicle. There were a number of Feeder Funds that invested money with the IA Business. I identified 64 BLMIS customer accounts as Feeder Funds for purposes of my analysis, including accounts related to Access International Advisors, Beacon and Andover, Cardinal Management, Defender, Equity Trading, Fairfield Greenwich Group, Harley International Fund, HSBC, Kingate, Legacy Capital, Luxembourg Investment Fund, M – Invest, Maxam Capital Management, Merkin funds, Mosaic Fund, Mount Capital, Optimal, Oreades, Plaza Investments, Square One, Thybo, Tremont Group Holdings, and Vizcaya Partners. See **Exhibit 5** for a list of these 64 BLMIS customer accounts.

59. For each of these three categories of BLMIS customer accounts, I quantified the cash deposits into BLMIS by year starting in 1981 and then calculated the cash deposits from each category as a percentage of total cash deposits across all BLMIS customer accounts to determine the composition of cash deposits each year and the changes over time.

#### **B. RESULTS OF ANALYSIS**

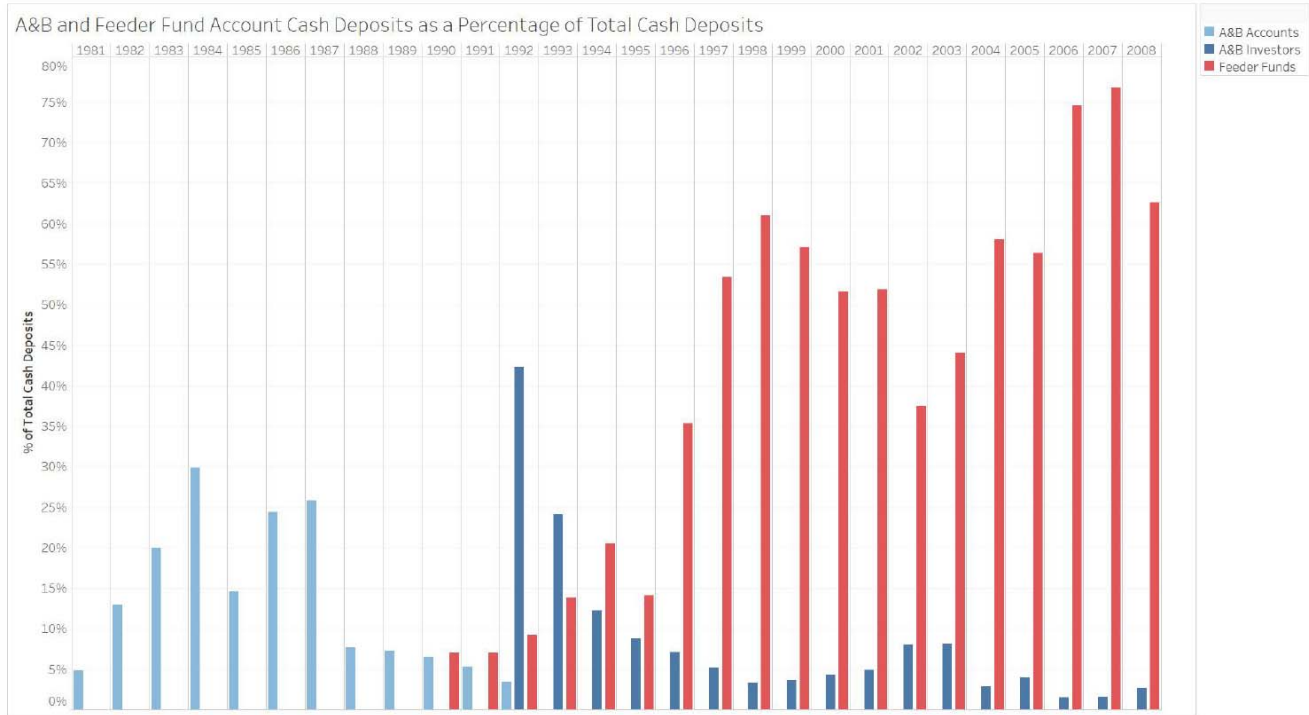
60. **Figure 11** below is a chart that depicts the results of my analysis of the cash deposits from BLMIS customers over time.

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<sup>40</sup> Two of the Eight BLMIS Accounts (1G0091 and 1T0025) were not assigned to a group in the A.Name table. The remaining six of the Eight BLMIS Accounts were assigned to the “A&B-ALL” or “A&B-Glantz” groups in the A.Name table.

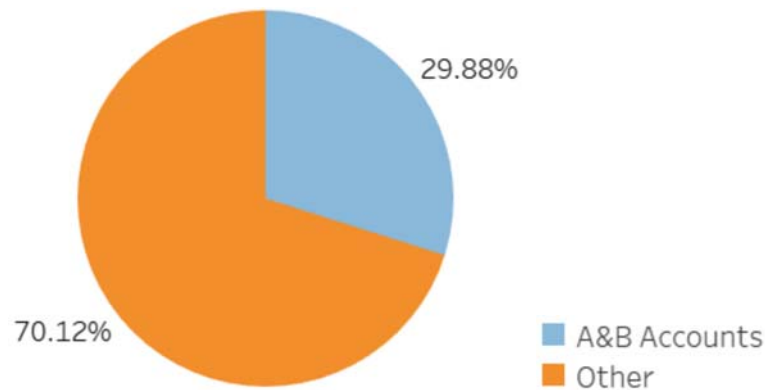


**FIGURE 11**  
**Cash Deposits from BLMIS Customers**  
**1981 – 2008**



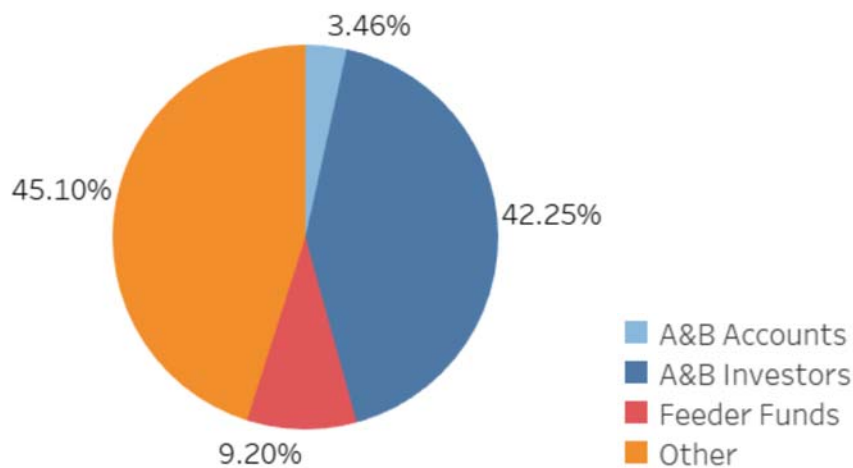
61. As reflected in **Figure 11** above (*see also Exhibit 6*), cash deposits from the A&B Accounts occurred throughout the 1980s up until the liquidation of the A&B Accounts in November 1992, totaling more than \$200 million during this time period. The cash deposits from the A&B Accounts peaked in 1984, making up approximately 30% of the total cash deposits into BLMIS, as reflected in **Figure 12** below:

**FIGURE 12**  
**Cash Deposits into BLMIS**  
**1984**



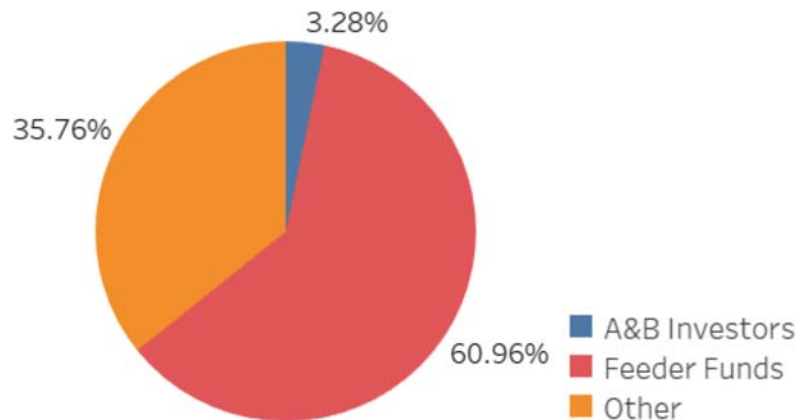
62. Then, in late 1992, after the A&B Accounts were closed, cash deposits from the A&B Investor Accounts began, totaling over \$500 million from November 1992 through 1993. In 1992 alone, the cash deposits from the A&B Investor Accounts comprised over 42% of the total cash deposits into BLMIS, as shown in **Figure 13** below:

**FIGURE 13**  
**Cash Deposits into BLMIS**  
**1992**

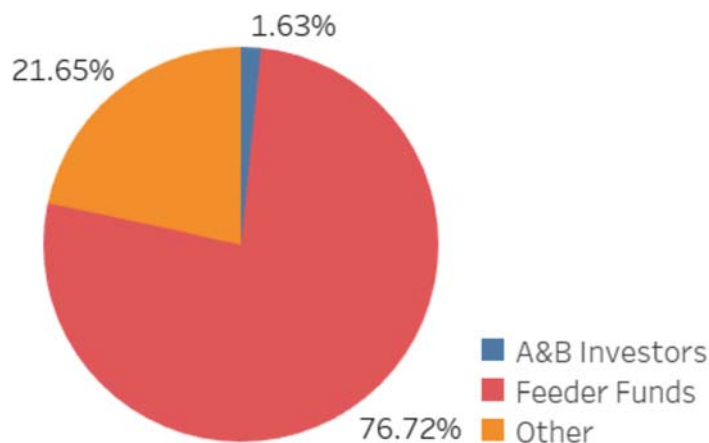


63. Finally, certain of the Feeder Funds began depositing cash into BLMIS in 1989, but really increased cash deposit activity in the early to mid-1990s with over \$1.6 billion in cash deposits into BLMIS during 1998, representing approximately 61% of the total cash deposits (see **Figure 14**). This increasing trend of cash deposits by Feeder Funds continued throughout 2000, reaching over \$5.5 billion in cash deposits into BLMIS, or close to 77% of the total cash deposits, in 2007 (see **Figure 15**).

**FIGURE 14**  
**Cash Deposits into BLMIS**  
**1998**



**FIGURE 15**  
**Cash Deposits into BLMIS**  
**2007**



64. Therefore, I conclude that the composition of cash deposits into BLMIS from the three categories of customer accounts changed over time from before the liquidation of the A&B Accounts in November 1992, to after the liquidation, through the end of 2008. Specifically, from at least the 1980s through November 1992, the A&B Accounts provided a significant source of funds deposited into BLMIS. Shortly after the A&B Accounts closed in November 1992, former clients of A&B began to open direct accounts with BLMIS, providing significant cash deposits into the IA Business from November 1992 through 1993. Beginning in the mid-1990s, Feeder Funds became a primary source of customer funds into BLMIS, providing a steady stream of funds to the IA Business, which lasted through the collapse of BLMIS in 2008.

## **VIII. RECONCILIATION OF CASH TRANSACTIONS IN THE A&B ENTITY ACCOUNTS TO AVAILABLE DOCUMENTATION**

### **A. OVERVIEW AND METHODOLOGY**

65. I was also asked to determine whether the cash deposit and withdrawal transactions reflected on the customer statements for the A&B Entity Accounts reconciled to available documentation. For purposes of this report, I use the term “reconciled” to indicate when I have matched, agreed and/or determined consistency between cash transactions reflected on BLMIS customer statements to information or data per another source (*e.g.*, amounts on BLMIS bank records, correspondence between the customer and BLMIS regarding requests for withdrawals, or documents produced to the Trustee related to the A&B Entity Accounts).

66. To determine whether the cash transactions reflected on the customer statements for the A&B Entity Accounts reconciled to available documentation, I used the results of the forensic analysis of the available BLMIS bank records as described in the Collura January 2019 Report. I also reviewed and analyzed other documents and records maintained at BLMIS, including documents contained in BLMIS customer files related to the A&B Entity Accounts. In addition, I reviewed hundreds of thousands of documents produced to the Trustee related

to the A&B Entity Accounts, including records from a QuickBooks accounting program maintained for the A&B Entity Defendants (“QuickBooks”) and electronic spreadsheets from defendant Frank Avellino’s computer files.

67. The chronological listings of all cash and principal transactions for every BLMIS customer account compiled by FTI, as described in the Principal Balance Calculation Report, included the cash transactions for the A&B Entity Accounts. From January 1993 to December 2008, the customer statements for the A&B Entity Accounts reflected 298 cash deposit and withdrawal transactions, consisting of 56 cash deposits into the A&B Entity Accounts totaling \$109,589,492, and 242 cash withdrawals from the A&B Entity Accounts totaling \$184,468,000.<sup>41</sup> I was tasked with reconciling these 298 cash transactions to available BLMIS bank records, documents contained in BLMIS customer files, and/or documents produced to the Trustee related to the A&B Entity Accounts. *See Exhibit 7* for a list of these cash transactions; *see also Exhibit 10* – “Reconciliation and Tracing Results – A&B Entity Accounts.”

*B. RECONCILIATION TO BLMIS BANK ACCOUNTS*

68. Of the 298 cash transactions reflected on the customer statements for the A&B Entity Accounts, 166 occurred in the ten-year period for which there were available bank records for the three BLMIS bank accounts described in the Collura January 2019 Report. I reconciled 162 of the cash transactions reflected on the customer statements for the A&B Entity Accounts during the period December 1998 to December 2008 to available BLMIS bank records, including monthly bank statements, copies of deposited checks and deposit slips, and copies of cancelled checks. The 162 cash transactions were reconciled to the BLMIS bank accounts as follows:

- 703 Account – 86 transactions (two deposits via wire transfers, 22 deposits via check, 62 withdrawals via wire transfer)

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<sup>41</sup> Four cash withdrawal transactions and one cash deposit transaction reflected on the customer statements for the A&B Entity Accounts were subsequently cancelled and are therefore excluded from the count of total cash transactions.

- 509 Account – 76 transactions (withdrawals via check)

69. The remaining four transactions, which occurred during the time period for which BLMIS bank records were available, could not be reconciled because the cancelled checks related to these cash withdrawal transactions from the A&B Entity Accounts could not be located.<sup>42</sup> However, based on the results of my reconciliation, it is reasonable to infer that had copies of these cancelled checks been available, I could have completed my reconciliation of the cash transactions in the A&B Entity Accounts during the ten-year period from December 1998 to December 2008.

70. In addition, based on the results of my reconciliation of the cash transactions in the A&B Entity Accounts to available BLMIS bank records, as well as the results of my Global Reconciliation as further described in the Collura January 2019 Report, I can reasonably infer that if BLMIS bank records prior to December 1998 were available to me, I would be able to reconcile the pre-December 1998 cash transactions in the A&B Entity Accounts.

#### C. RECONCILIATION TO BLMIS CUSTOMER FILES

71. In addition to reconciling the cash transactions for the A&B Entity Accounts to the available BLMIS bank records as described above, I also reviewed customer files from BLMIS's records to identify correspondence related to the cash transactions reflected on the customer statements for the A&B Entity Accounts.

72. Customer files related to customer accounts were maintained in BLMIS's records and were generally organized by BLMIS account number. These customer files contained documents including, but not limited to, correspondence between the customer and BLMIS employees regarding incoming deposits and/or requests for withdrawals, customer contact information, BLMIS customer agreements, as well as trust and other agreements.

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<sup>42</sup> See **Exhibit 7** (cash withdrawal transactions dated 7/1/1999, 9/24/1999, 10/5/1999 and 10/8/1999). Also shown on **Exhibit 7**, I reconciled these four cash withdrawal transactions to documents contained in BLMIS customer files, as well as QuickBooks records maintained for the A&B Entity Defendants.

73. As part of my analysis, I identified the customer files for the A&B Entity Accounts within BLMIS's records. I reviewed the documents contained in these customer files to identify correspondence that related to the cash transactions reflected on the customer statements for the A&B Entity Accounts. I identified letters and/or other correspondence in the customer files that support 269 of the 298 cash transactions in the A&B Entity Accounts. One of these letters, which is a request for a cash withdrawal from one of the A&B Entity Accounts, is attached as **Exhibit 8** and is described further below:

- In a letter dated October 29, 2008, defendant Frank Avellino requests on behalf of defendant Aster Associates, "Please wire-transfer the sum of Five Hundred Thousand Dollars (\$500,000) from the Aster Associates account to the following bank account as soon as possible . . . ."

74. Furthermore, defendant Frank Avellino testified that he reviewed the BLMIS customer statements for the A&B Entity Accounts every month,<sup>43</sup> and based on my review of the documents contained in the customer files for the A&B Entity Accounts, I have not found any instance of the A&B Entity Defendants or Non-A&B Entity Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the A&B Entity Accounts.

*D. RECONCILIATION TO DOCUMENTS PRODUCED TO THE TRUSTEE*

75. As of the date of this report, certain of the A&B Entity Defendants have produced reports and other accounting detail generated from QuickBooks, an accounting program used by the A&B Entity Defendants to account for financial activity, including, but not limited to, activity in the A&B Entity Accounts. The QuickBooks records provided by the A&B Entity Defendants cover activity for four of the A&B Entity Defendants – Aster, Grosvenor, Kenn Jordan, and Mayfair – for the period from January 1999 to December 2008. I reconciled the accounting entries included in these records to the cash transactions reflected in the BLMIS

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<sup>43</sup> See deposition of Frank Avellino, 90:13 – 92:19, Nov. 20, 2019.

customer statements for the A&B Entity Accounts and identified accounting entries to record 113 of the 298 cash transactions in the A&B Entity Accounts.

76. In addition, documents produced to the Trustee consisted of, among other things, electronic spreadsheets detailing activity related to the cash transactions in the A&B Entity Accounts. These spreadsheets were produced to the Trustee by defendant Frank Avellino and were assigned several Bates prefixes, including "FA\_LAPTOP." I reconciled 84 of the 298 cash transactions reflected on the customer statements for the A&B Entity Accounts to these electronic spreadsheets produced to the Trustee.

*E. OVERALL RESULTS OF RECONCILIATION*

77. In total, based on my analyses described above, I reconciled 289 (or approximately 97%) of the 298 cash transactions reflected on the customer statements for the A&B Entity Accounts to available BLMIS bank records, documentation contained in BLMIS customer files, and/or QuickBooks accounting records and defendant Frank Avellino's laptop files produced to the Trustee related to the A&B Entity Accounts. **Exhibit 7**, which lists each of the 298 cash transactions for the A&B Entity Accounts, contains columns that indicate the results of my reconciliation to each of these sources of information.

78. I was unable to reconcile the remaining cash transactions reflected on the customer statements for the A&B Entity Accounts due to the unavailability of records related to transactions dated between March 1993 and June 1995. However, as noted above, defendant Frank Avellino testified that he reviewed the customer statements for the A&B Entity Accounts every month, and based on my review of the documents contained in the customer files for the A&B Entity Accounts, I have not found any instance of the A&B Entity Defendants or Non-A&B Entity Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the A&B Entity Accounts.

79. In addition, based on the results of my reconciliation of the cash transactions in the A&B Entity Accounts to available BLMIS bank records, as well as the results of my Global



Reconciliation as further described in the Collura January 2019 Report, I can reasonably infer that if BLMIS bank records prior to December 1998 were available to me, I would be able to reconcile the pre-December 1998 cash transactions in the A&B Entity Accounts.

## **IX. TRACING INITIAL TRANSFERS OF BLMIS FUNDS TO THE A&B ENTITY DEFENDANTS**

### **A. OVERVIEW AND METHODOLOGY**

80. I was also asked to determine whether the Initial Transfers of BLMIS funds (*i.e.*, cash withdrawals reflected on the customer statements for the A&B Entity Accounts) during the Post January 2001 Period could be traced to bank accounts held by the A&B Entity Defendants. For purposes of this report, I use the term “traced” to indicate when I have followed the flow of funds from one bank account (*e.g.*, BLMIS’s bank account) to another bank account (*e.g.*, A&B Entity Defendants’ bank account).

81. The available BLMIS bank records, as described in the Collura January 2019 Report, were used to determine whether I could trace the funds that left BLMIS’s bank accounts (*i.e.*, the Initial Transfers) to bank accounts held by the A&B Entity Defendants. To determine this, I performed a “Receiving Bank” analysis, which traces transfers from BLMIS’s bank accounts to bank accounts that received funds from BLMIS.

82. During the Post January 2001 Period, the customer statements for the A&B Entity Accounts reflected 114 cash withdrawal transactions totaling \$104,205,000.<sup>44</sup> These cash withdrawal transactions were in the form of wire transfers from the 703 Account and checks written from the 509 Account.

83. Tracing cash withdrawals from the 703 Account via wire transfers is based on the transaction description contained on the monthly bank statements. Often, the description on the bank statements for the 703 Account included the identification of both the banking

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<sup>44</sup> The total amount of cash withdrawals from the A&B Entity Accounts in the Post January 2001 Period includes a \$2,500,000 cash withdrawal transaction from one of the A&B Entity Accounts (1ZB046) dated December 29, 2000 that cleared the 509 Account on January 3, 2001. See MADWAA00151915 – 16 and MADWAA00147871.

institution that received the cash transfer and the beneficiary of the transfer. In some cases, the description also included the corresponding bank account number. The JPMC Wire File produced to the Trustee by JPMC detailing the activity in the 703 Account contained the same, and in some cases, additional detail related to the transactions via wire transfers. Therefore, I also relied on the JPMC Wire File to identify information regarding the flow of funds related to wire transfers in and out of the 703 Account.

84. Tracing cash withdrawals via check requires a legible copy of a cancelled check. The necessary information to trace the amount to a receiving bank account, including endorser, banking institution and bank account number, is typically included on the back of a cancelled check. Oftentimes, however, not all of this information was available on the copy of the cancelled check written from the 509 Account and/or the available information was often illegible. In any event, when possible, I identified and captured all available and legible information from the cancelled checks written from the 509 Account related to withdrawals from the A&B Entity Accounts.

85. In addition, to trace Initial Transfers from BLMIS, I also reviewed records related to bank accounts held by the A&B Entity Defendants that were produced to the Trustee by third-party financial institutions, including Northern Trust, NA (“Northern Trust”), City National Bank of Florida (“City National Bank”), Bank of America, N.A. (“Bank of America”), and Bank Atlantic.

*B. RESULTS OF TRACING INITIAL TRANSFERS OF BLMIS FUNDS*

86. **Exhibit 9** summarizes the results of my Receiving Bank analysis and my review of bank records produced to the Trustee by third-party financial institutions.<sup>45</sup> This exhibit lists the bank accounts I identified by tracing Initial Transfers from BLMIS during the Post January 2001 Period and supports that 100% of the cash withdrawals reflected on the customer statements for the A&B Entity Accounts during the Post January 2001 Period went to nine bank

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<sup>45</sup> See also **Exhibit 10**.

accounts held by six of the A&B Entity Defendants – Aster Associates, Grosvenor Partners, Ltd., Kenn Jordan Associates, Mayfair Ventures, G.P., St. James Associates, and Strattham Partners (collectively, the “Nine A&B Entity Bank Accounts”).

## **X. COMMINGLING OF FUNDS IN A&B ENTITY BANK ACCOUNTS**

### **A. OVERVIEW AND METHODOLOGY**

87. I was also asked to determine whether there were sources of funds other than from BLMIS and therefore, commingling of funds, in the Nine A&B Entity Bank Accounts that received Initial Transfers from BLMIS, which are listed in **Figure 16** below. To do this, I reviewed and analyzed available records related to these bank accounts that were produced to the Trustee, and identified and quantified the sources of funds into these bank accounts.

88. For purposes of this report, commingling is defined as the combination of BLMIS funds (Initial Transfers) and other sources of funds in these bank accounts, such that BLMIS funds become unidentifiable and/or cannot be specifically separated from other funds.

**FIGURE 16**  
**Nine A&B Entity Bank Accounts**

Account (Defined Term)	Account Holder	Banking Institution	Account Number	Months of Available Bank Statements <sup>46</sup>
Aster NT '7237 Account	Aster Associates	Northern Trust	xxxxxx7237	Oct 2004 – Aug 2009 <sup>47</sup>
Grosvenor CN '6545 Account	Grosvenor Partners Ltd	City National Bank	xxxxxx6545	Mar 2000 – Jun 2006 <sup>48</sup>
Grosvenor NT '6281 Account	Grosvenor Partners Ltd	Northern Trust	xxxxxx6281	Jan 2006 – Aug 2009 <sup>49</sup>
Kenn Jordan NT '1748 Account	Kenn Jordan Associates	Northern Trust	xxxxxx1748	Feb 1998 – Aug 2009 <sup>50</sup>
Mayfair CN '6558 Account	Mayfair Ventures GP	City National Bank	xxxxxx6558	May 2000 – Jun 2010 <sup>51</sup>
Mayfair NT '3199 Account	Mayfair Ventures GP	Northern Trust	xxxxxx3199	Mar 1995 – Aug 2009 <sup>52</sup>
St. James CN '0119 Account	St. James Associates	City National Bank	xxxxxxx0119	Jun 2004 – Jun 2010 <sup>53</sup>
Strattham BA '5720 Account	Strattham Partners	Bank Atlantic	xxxxxx5720	Mar 2002 – Jan 2010 <sup>54</sup>
Strattham BoA '5422 Account	Strattham Partners	Bank of America	xxxx xxxx 5422	Jun 2006 – Jul 2009 <sup>55</sup>

89. To determine whether BLMIS funds were commingled with other sources of funds in the Nine A&B Entity Bank Accounts listed in **Figure 16** above, I first identified and gathered

<sup>46</sup> The bank records cited in my report and exhibits are ones produced to the Trustee by third-party financial institutions. The defendants in this action have also produced bank records that I have reviewed as part of my analysis. *See Exhibit 2 – Documents Considered.*

<sup>47</sup> *See* NTCSAD0000381 – NTCSAD0000484; 10-05421\_NTC000048 – 10-05421\_NTC000154.

<sup>48</sup> *See* CNBSAB0000203 – CNBSAB0000328.

<sup>49</sup> *See* NTCSAD0001085 – NTCSAD0001139; 10-05421\_NTC000789 – 10-05421\_NTC000848.

<sup>50</sup> *See* NTCSAD0000004 – NTCSAD0000166; 10-05421\_NTC000849 – 10-05421\_NTC000937.

<sup>51</sup> *See* CNBSAD0000994 – CNBSAD0001115.

<sup>52</sup> *See* NTCSAD0000888 – NTCSAD0001060; 10-05421\_NTC000938 – 10-05421\_NTC001005. The January 1998 statement for the Mayfair NT '3199 Account was missing from the documents produced to the Trustee.

<sup>53</sup> *See* CNBSAD0001144 – CNBSAD0001216. In addition, a check from the St. James CN '0119 Account to defendant Dianne K. Bienes dated October 2010 was included in the documents produced to the Trustee. *See* STJAMES\_000035 – STJAMES\_000036 and 10-05421\_CNB\_0000839 – 10-05421\_CNB\_0000840.

the relevant and available bank account records related to these bank accounts. I then performed the following:

- Reviewed documents related to activity in and out of the Nine A&B Entity Bank Accounts, including monthly bank statements, copies of cancelled checks, and copies of deposit slips and deposited checks, produced to the Trustee by third-party financial institutions;
- Converted the information contained in the monthly bank statements to electronic data through Optical Character Recognition (OCR) software and/or manual data entry;
- Confirmed the completeness of the electronic data of transactions derived from the monthly bank statements by comparing the total amount of the transactions for each available period to the difference between the beginning and ending account balance for that period;
- Organized the electronic data by bank account and incoming and outgoing cash transactions in chronological order;<sup>56</sup> and
- Determined the source of incoming funds and the recipient of outgoing funds based on available bank records and QuickBooks records, as applicable.

90. Next, in the chronological listings of transactions related to the Nine A&B Entity Bank Accounts, I specifically identified transfers of BLMIS funds and any transfers between and among the A&B Entity Defendants. For purposes of this analysis, I focused on the activity during the Post January 2001 Period.

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<sup>54</sup> See BACSAA0000051 – BACSAA0000162, 10-05421\_BBT\_0000119 – 10\_05421\_BBT\_0000191. While there are statements for this account through January 2010, the last transaction in the account is dated September 1, 2009. BB&T acquired BankAtlantic in 2012. See *BB&T to close BankAtlantic deal after receiving Fed OK*, REUTERS, <https://www.reuters.com/article/us-bbt-bankatlantic-idUSBRE86U1SD20120731> (last visited May 15, 2020).

<sup>55</sup> See BOASAA0003544 – BOASAA0003676, BAFA000002276 – BAFA000002390.

<sup>56</sup> For purposes of my tracing analysis, same day transactions followed the order that the transactions appeared on the monthly bank statements. In addition, I have excluded returned, refunded, and cancelled transactions from my tracing analysis.

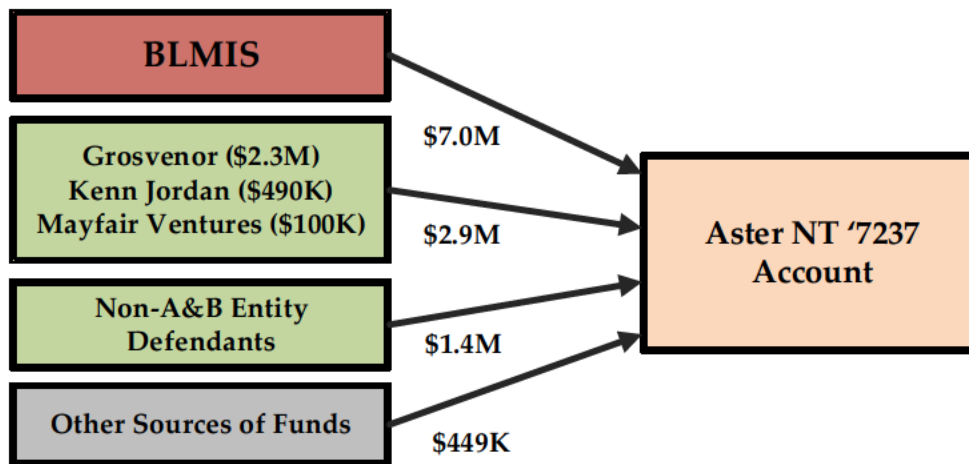
**B. RESULTS OF ANALYSIS**

91. Based on the analysis described above and further detailed below, I determined that there was commingling of funds in each of the Nine A&B Entity Bank Accounts listed in **Figure 16**. Specifically, there were sources of funds in these bank accounts other than Initial Transfers of BLMIS funds.

**Aster NT '7237 Account**

92. Between October 2004 and August 2009, there was a total of approximately \$11.7 million of inflows into the Aster NT '7237 Account, including \$7 million of BLMIS funds. As shown in **Figure 17**, there were sources of funds in the Aster NT '7237 Account other than BLMIS funds, including transfers from certain other A&B Entity Defendants, and therefore commingling of funds in the account.

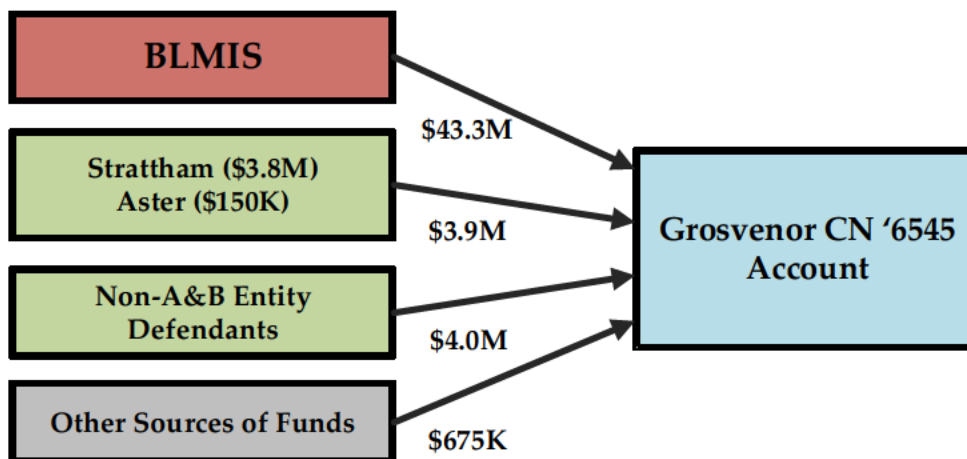
**FIGURE 17**  
**Commingling in the Aster NT '7237 Account**  
**October 2004 – August 2009**



**Grosvenor CN '6545 Account**

93. Between January 2001 and June 2006, there was a total of approximately \$51.9 million of inflows into the Grosvenor CN '6545 Account, including \$43.3 million of BLMIS funds.<sup>57</sup> As shown in **Figure 18**, there were sources of funds in the Grosvenor CN '6545 Account other than BLMIS funds, including transfers from certain other A&B Entity Defendants, and therefore commingling of funds in the account.

**FIGURE 18**  
**Commingling in the Grosvenor CN '6545 Account**  
**January 2001 – June 2006**



**Grosvenor NT '6281 Account**

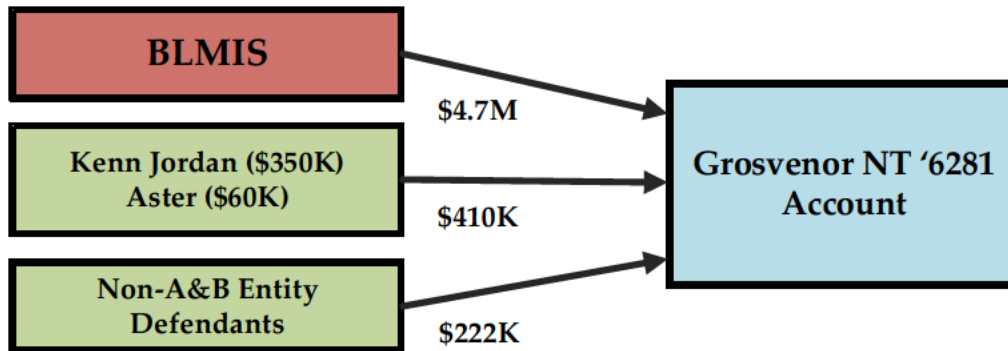
94. Between January 2006 and August 2009, there was a total of approximately \$5.3 million of inflows into the Grosvenor NT '6281 Account, including \$4.7 million of BLMIS

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<sup>57</sup> There was a balance in the Grosvenor CN '6545 Account of \$155,510 at the start of the Post January 2001 Period. Bank statements for this account are available back to March 2000. Between March 2000 and December 2000, I traced an additional \$8,850,000 from BLMIS to this account. I applied the five tracing methods, as described further below, to the activity in the account between March 2000 and December 2000 to determine the portion of the beginning balance as of January 1, 2001 that is BLMIS funds versus other funds.

funds. As shown in **Figure 19**, there were sources of funds in the Grosvenor NT '6281 Account other than BLMIS funds, including transfers from certain other A&B Entity Defendants, and therefore commingling of funds in the account.

**FIGURE 19**  
**Commingling in the Grosvenor NT '6281 Account**  
**January 2006 – August 2009**



#### **Kenn Jordan NT '1748 Account**

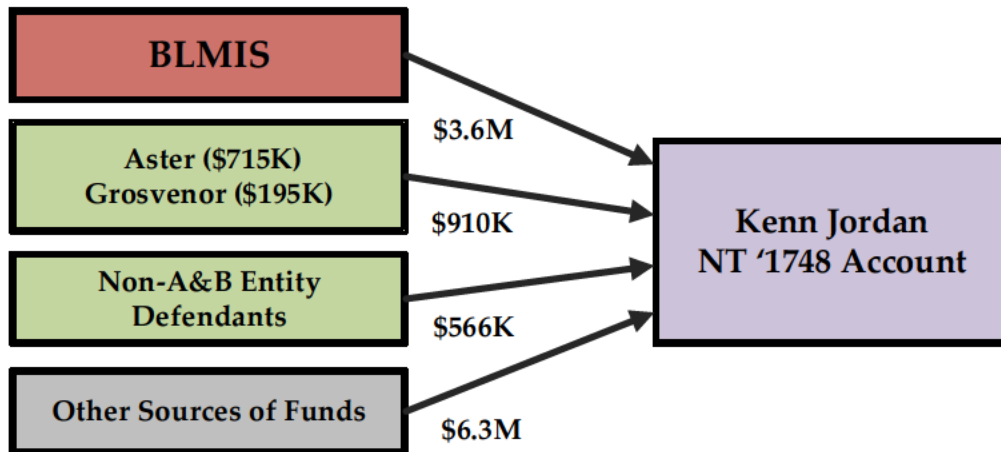
95. Between January 2001 and August 2009, there was a total of approximately \$11.3 million of inflows into the Kenn Jordan NT '1748 Account, including \$3.6 million of BLMIS funds.<sup>58</sup> As shown in **Figure 20**, there were sources of funds in the Kenn Jordan NT '1748 Account other than BLMIS funds, including transfers from certain other A&B Entity Defendants, and therefore commingling of funds in the account.

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<sup>58</sup> There was a balance in the Kenn Jordan NT '1748 Account of \$139,432 at the start of the Post January 2001 Period. Bank statements for this account are available back to February 1998. Between February 1998 and December 2000, I traced an additional \$1,085,000 from BLMIS to this account. I applied the five tracing methods, as described further below, to the activity in the account between January 1998 and December 2000 to determine the portion of the beginning balance as of January 1, 2001 that is BLMIS funds versus other funds. The beginning balance in the account in February 1998 (first available statement) was \$45,450, which I have considered non-BLMIS funds for purposes of my tracing analysis due to the lack of statements prior to February 1998.



**FIGURE 20**  
**Commingling in the Kenn Jordan NT '1748 Account**  
**January 2001 – August 2009**



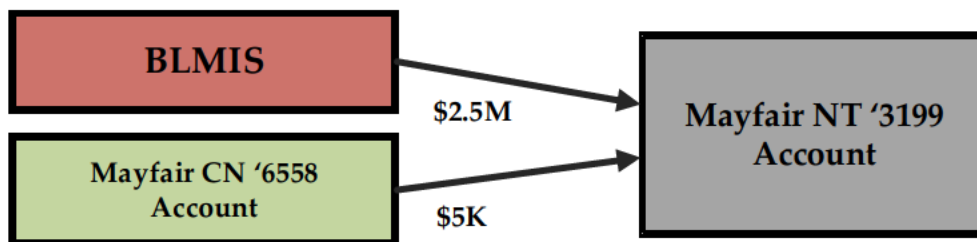
**Mayfair CN '6558 Account**

96. Between January 2001 and June 2010, there was a total of approximately \$1.05 million of inflows into the Mayfair CN '6558 Account, consisting solely of funds from BLMIS funds. As there was a balance in the account at the beginning of the Post January 2001 Period of \$4,680, and no transfers from BLMIS prior to January 2001, I have concluded that there was commingling of funds in the account.

### Mayfair NT '3199 Account

97. Between January 2001 and August 2009, there was a total of approximately \$2.5 million of inflows into the Mayfair NT '3199 Account, including \$2.5 million of BLMIS funds.<sup>59</sup> As shown in **Figure 21**, the only other source of funds into the Mayfair NT '3199 Account during the Post January 2001 Account was a transfer of \$5,000 from the Mayfair CN '6558 Account. In addition, as there was a balance in the account at the beginning of the Post January 2001 Period of \$27,943, I have concluded that there was commingling of funds in the account.

**FIGURE 21**  
**Commingling in the Mayfair NT '3199 Account**  
**January 2001 – August 2009**



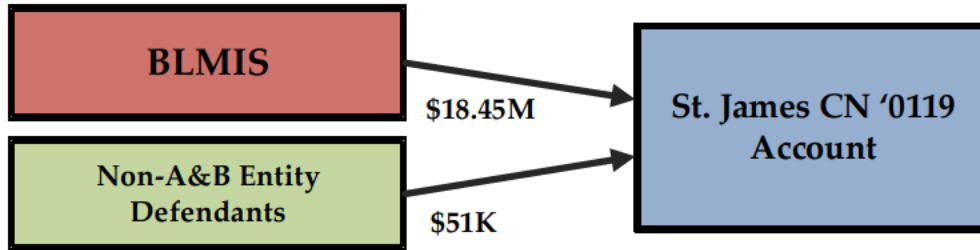
### St. James CN '0119 Account

98. Between June 2004 and June 2010, there was a total of approximately \$18.5 million of inflows into the St. James CN '0119 Account, including \$18.45 million of BLMIS funds. As shown in **Figure 22**, there were sources of funds in the St. James CN '0119 Account other than BLMIS funds and therefore commingling of funds in the account.

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<sup>59</sup> There was a balance in the Mayfair NT '3199 Account of \$27,943 at the start of the Post January 2001 Period. Bank statements for this account are available back to March 1995. Between March 1995 and December 2000, I traced an additional \$4,800,000 from BLMIS to this account. I applied the five tracing methods, as described further below, to the activity in the account between March 1995 and December 2000 to determine the portion of the beginning balance as of January 1, 2001 that is BLMIS funds versus other funds. The beginning balance in the account in March 1995 (first available statement) was \$152,943, which I have considered non-BLMIS funds for purposes of my tracing analysis due to the lack of statements prior to March 1995.

**FIGURE 22**  
**Commingling in the St. James CN '0119 Account**  
**June 2004 – June 2010**



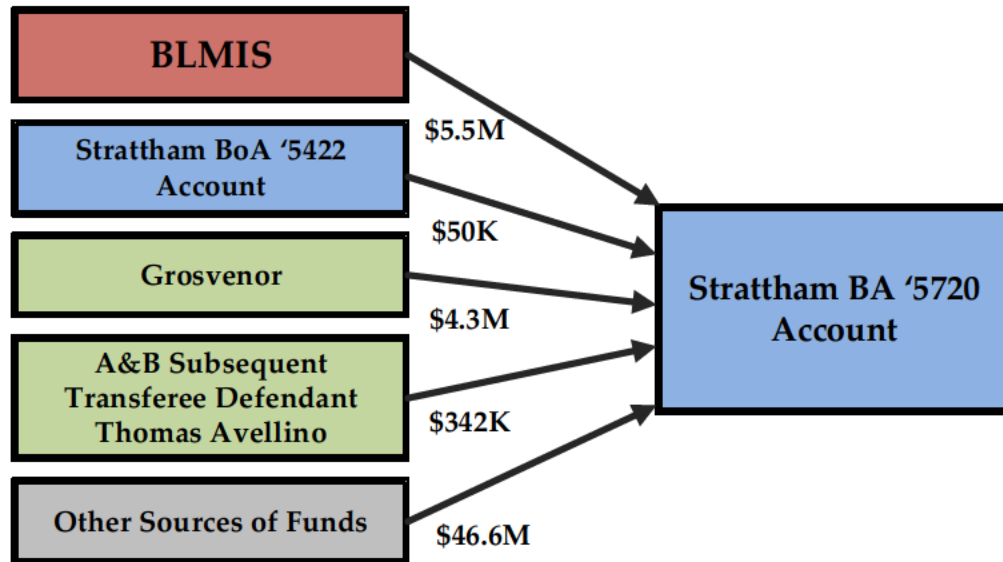
**Strattham BA '5720 Account**

99. Between March 2002 and September 2009, there was a total of approximately \$56.8 million of inflows into the Strattham BA '5720 Account, including \$5.5 million of BLMIS funds.<sup>60</sup> As shown in **Figure 23**, there were sources of funds in the Strattham BA '5720 Account other than BLMIS funds, including transfers from one of the other A&B Entity Defendants, and therefore commingling of funds in the account.

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<sup>60</sup> The available statements for the Strattham BA '5720 Account start in March 2002, when there is a beginning balance in the account of \$4,674 (which I have considered non-BLMIS funds for purposes of my tracing analysis due to the lack of statements prior to March 2002). Between January 2001 and March 2002, I traced an additional \$165,000 from BLMIS to the Strattham BA '5720 Account (*see Exhibit 10*) which is excluded from my subsequent transfer tracing analysis due to these missing statements for the Strattham BA '5720 Account.

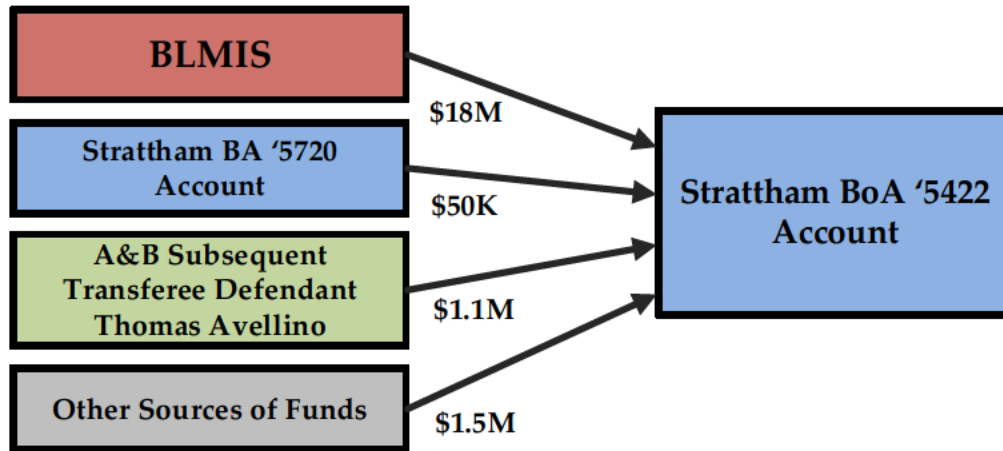
**FIGURE 23**  
**Commingling in the Strattham BA '5720 Account**  
**March 2002 – September 2009**



**Strattham BoA '5422 Account**

100. Between June 2006 and July 2009, there was a total of approximately \$20.6 million of inflows into the Strattham BoA '5422 Account, including \$18 million of BLMIS funds. As shown in **Figure 24**, there were sources of funds in the Strattham BoA '5422 Account other than BLMIS funds and therefore commingling of funds in the account.

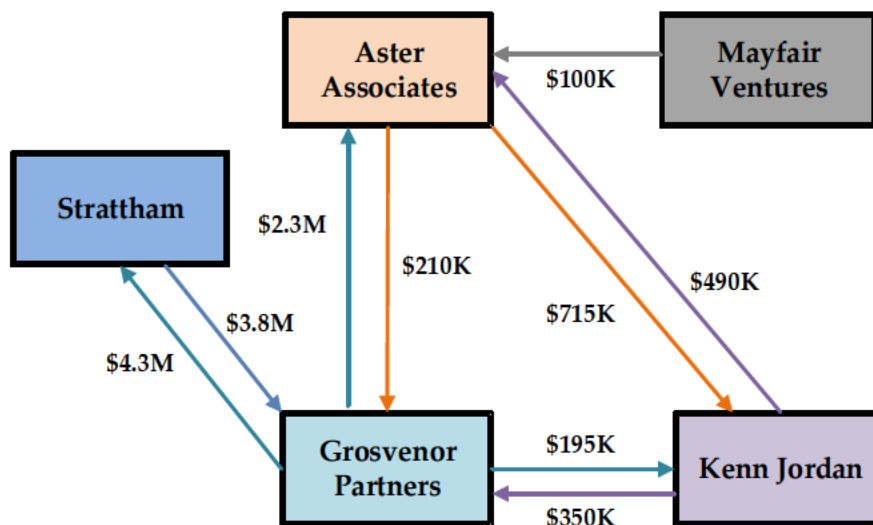
**FIGURE 24**  
**Commingling in the Strattham BoA '5422 Account**  
**June 2006 – July 2009**



**Transfers Between the A&B Entity Defendants**

101. As shown in the flowcharts above (Figures 17 – 24), there were hundreds of thousands to millions of dollars in transfers of funds among five of the A&B Entity Defendants, as summarized in Figure 25 below.

**FIGURE 25**  
**Transfers Among the A&B Entity Defendants**



## **XI. SUBSEQUENT TRANSFERS OF BLMIS FUNDS TO A&B SUBSEQUENT TRANSFEREE DEFENDANTS**

### **A. OVERVIEW AND METHODOLOGY**

102. I was also asked to determine whether any of the Initial Transfers of BLMIS funds received by the A&B Entity Defendants during the Post January 2001 Period, identified in **Section VI** above, were subsequently transferred to the A&B Subsequent Transferee Defendants. If so, I was then asked to identify the pathways through which such Subsequent Transfers of BLMIS funds took place and to identify the dates and amounts of such Subsequent Transfers.

103. To identify Subsequent Transfers of BLMIS funds, I again used the chronological listings of transactions related to the Nine A&B Entity Bank Accounts listed in **Figure 16** above, which were derived from records produced to the Trustee by third-party financial institutions. As explained in **Section X** above, I determined that all Nine A&B Entity Bank Accounts were commingled with BLMIS funds and other sources of funds.

104. There are several tracing methods applied by forensic accountants to trace funds through commingled bank accounts. I reviewed and applied the following tracing methods to the chronological listings of transactions that I derived from the available bank records to identify Subsequent Transfers of BLMIS funds:

- Last In, First Out (“LIFO”)
- First In, First Out (“FIFO”)
- Lowest Intermediate Balance Rule (“LIBR”)
- Restated Tracing Rules
- Proportionality

### **B. TRANSFERS FROM THE A&B ENTITY DEFENDANTS TO THE A&B SUBSEQUENT TRANSFEREE DEFENDANTS**

105. To identify transfers from the A&B Entity Defendants to the A&B Subsequent Transferee Defendants during the Post January 2001 Period, I reviewed the chronological

listings of transactions related to the Nine A&B Entity Bank Accounts listed in **Figure 16** above. I also reviewed records produced to the Trustee by third-party financial institutions related to bank accounts held by the A&B Subsequent Transferee Defendants. In addition, I also reviewed records from QuickBooks maintained for the A&B Entity Defendants that were produced to the Trustee.

106. Based on my review of the available evidence described above, I identified a total of \$86,061,779 in transfers to the A&B Subsequent Transferee Defendants<sup>61</sup> during the Post January 2001 Period from the Nine A&B Entity Bank Accounts, as summarized in **Figure 26** below (*see also* **Exhibit 11** for a summary of these transfers and **Exhibit 12** for details).<sup>62</sup>

**FIGURE 26**  
**Transfers to the A&B Subsequent Transferee Defendants**  
**from the A&B Entity Defendants**

A&B Subsequent Transferee Defendant(s)	Total Transfers from A&B Entity Defendants
Michael Bienes and/or Dianne Bienes	\$34,612,379
Frank Avellino and/or Nancy Avellino	\$26,805,977
A&B Entity Defendants	\$12,520,000
Thomas Avellino	\$5,846,507
Ascent, Inc	\$2,693,816
The Avellino Family Foundation	\$2,640,000
Other A&B Subsequent Transferee Defendants	\$943,100
<b>TOTAL</b>	<b>\$86,061,779</b>

107. The pathways through which these transfers were made consistently started with BLMIS, went through one of the A&B Entity Defendants, and were then transferred to the A&B

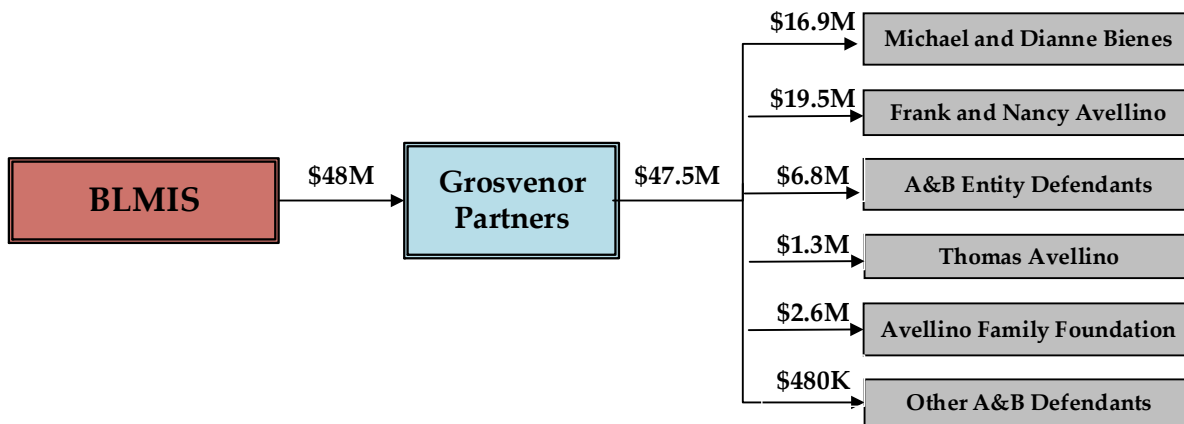
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<sup>61</sup> In addition, I identified \$689,894 in transfers from the Nine A&B Entity Bank Accounts that were not made directly to certain A&B Subsequent Transferee Defendants, but rather the A&B Subsequent Transferee Defendants were beneficiaries of these transfers (the "FBO Transfers"). *See Exhibit 11.1* for further details. I have excluded the FBO Transfers from my tracing analysis.

<sup>62</sup> Of the total \$86,061,779 in transfers from the Nine A&B Entity Bank Accounts to the A&B Subsequent Transferee Defendants, \$263,813 occurred after December 10, 2008.

Subsequent Transferee Defendants. **Figure 27** below is an example of the pathway of transfers through A&B Entity Defendant Grosvenor:

**FIGURE 27**  
**Pathway of BLMIS Transfers Through Grosvenor**



108. As discussed above, there was commingling of funds in the Nine A&B Entity Bank Accounts. Accordingly, I have applied the five tracing methods to the Nine A&B Entity Bank Accounts to determine the amount of Subsequent Transfers of BLMIS funds. The transactions in the Nine A&B Entity Bank Accounts, and the results of my analyses of these transactions using the five tracing methods are set forth in Excel spreadsheets attached as **Exhibits 13.1 – 13.9**.

**C. SUBSEQUENT TRANSFERS OF BLMIS FUNDS USING LAST IN, FIRST OUT (“LIFO”) TRACING METHOD**

109. The LIFO method is an accounting practice used to determine the cost of inventory. When applied to inventory accounting, LIFO assumes that the inventory sold during a certain period comes from the most recent inventory purchased. Under LIFO, the last units of inventory purchased are the first units to be sold. LIFO is also a method applied to trace funds in and out of a commingled bank account. When LIFO is applied to trace funds through a



bank account, the last money deposited into a commingled bank account is considered to be the first money disbursed from that bank account.

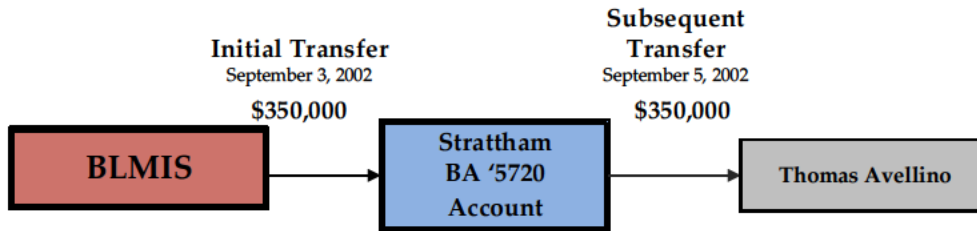
110. As discussed above, there was commingling of funds in the Nine A&B Entity Bank Accounts. Accordingly, I have applied the LIFO tracing method to the transactions in the Nine A&B Entity Bank Accounts to specifically identify Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants. By applying the LIFO tracing method, I identified a total of **\$71,808,192** in Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants, as summarized in **Figure 28** below, and as further detailed in **Exhibit 14.1**.

**FIGURE 28**  
**Subsequent Transfers of BLMIS Funds**  
**Under the LIFO Tracing Method**

A&B Subsequent Transferee Defendant(s)	Subsequent Transfers of BLMIS Funds (under LIFO)
Michael Bienes and/or Dianne Bienes	\$34,259,694
Frank Avellino and/or Nancy Avellino	\$23,201,801
A&B Entity Defendants	\$7,602,054
Thomas Avellino	\$2,785,960
Ascent, Inc	\$1,287,555
The Avellino Family Foundation	\$2,100,228
Other A&B Subsequent Transferee Defendants	\$570,900
<b>TOTAL</b>	<b>\$71,808,192</b>

111. **Figure 29** is an example of a Subsequent Transfer of BLMIS funds from the Strattham BA '5720 Account using the LIFO tracing method and illustrates the pathway through which the Subsequent Transfer took place.

FIGURE 29



112. The application of the LIFO tracing method in this example is shown in Figure 30, which includes an excerpt from the activity in the Strattham BA '5720 Account:

FIGURE 30

Date	Amount	Running Balance	Description Per Strattham BA '5720 Account Statement	BLMIS Funds	Other Funds
		\$11,728			
9/3/2002	\$350,000	\$361,728	Deposit	\$350,000	\$11,728
9/5/2002	(\$355,000)	\$6,728	Transfer Debit TRANSFER TO DEPOSIT ACCOUNT REDACTED3551	(\$350,000)	(\$5,000)
<b>Balance</b>		<b>\$6,728</b>		<b>-</b>	<b>\$6,728</b>

113. The Initial Transfer from BLMIS of \$350,000 was received on 9/3/2002 (see Exhibit 10). The transfer from the Strattham BA '5720 Account to defendant Thomas Avellino on 9/5/2002 was the next transaction after the inflow of \$350,000 from BLMIS. Under LIFO, the last money in (here, the \$350,000 from BLMIS) is the first money to be disbursed from the account. Therefore, under LIFO, \$350,000 of the total transfer from A&B Entity Defendant Strattham to defendant Thomas Avellino is considered a Subsequent Transfer of BLMIS funds.

**D. SUBSEQUENT TRANSFERS OF BLMIS FUNDS USING FIRST IN, FIRST OUT ("FIFO") TRACING METHOD**

114. The FIFO method is another accounting practice used to determine the cost of inventory. FIFO assumes that the inventory sold during a certain period comes from the oldest

inventory purchased. Under FIFO, the first units of inventory purchased are the first units to be sold. FIFO is also a method applied to trace funds in and out of a commingled bank account. Using FIFO, the first money deposited into a commingled bank account is considered to be the first money disbursed from that bank account.

115. I have applied the FIFO tracing method to the transactions in the Nine A&B Entity Bank Accounts to specifically identify Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants. By applying the FIFO tracing method, I identified \$70,993,732 in Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants, as summarized in **Figure 31** below, and as further detailed in **Exhibit 14.2**.

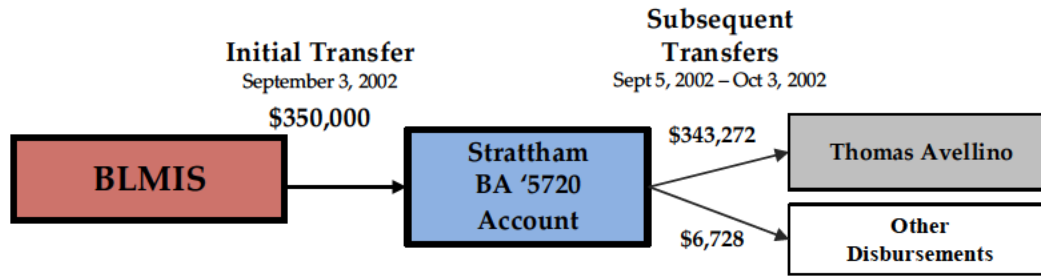
**FIGURE 31**  
**Subsequent Transfers of BLMIS Funds**  
**Under the FIFO Tracing Method**

A&B Subsequent Transferee Defendant(s)	Subsequent Transfers of BLMIS Funds (under FIFO)
Michael Bienes and/or Dianne Bienes	\$33,195,337
Frank Avellino and/or Nancy Avellino	\$23,328,542
A&B Entity Defendants	\$7,576,626
Thomas Avellino	\$2,902,297
Ascent, Inc	\$1,154,044
The Avellino Family Foundation	\$2,249,702
Other A&B Subsequent Transferee Defendants	\$587,186
<b>TOTAL</b>	<b>\$70,993,732</b>

*\*difference due to rounding*

116. **Figure 32** shows the Subsequent Transfers of BLMIS funds (the same Initial Transfer of \$350,000 received on 9/3/2002) from the Strattham BA '5720 Account using the FIFO tracing method and illustrates the pathway through which the Subsequent Transfers took place.

FIGURE 32



117. The application of the FIFO tracing method in this example is shown in **Figure 33**, which includes an excerpt from the activity in the Strattham BA '5720 Account:

FIGURE 33

Date	Amount	Running Balance	Description Per Strattham BA '5720 Account Statement	BLMIS Funds	Other Funds
		\$11,728			
9/3/2002	\$350,000	\$361,728	Deposit	\$350,000	\$11,728
9/5/2002	(\$355,000)	\$6,728	Transfer Debit TRANSFER TO DEPOSIT ACCOUNT REDACTED3551	(\$343,272)	(\$11,728)
<b>Balance</b>		<b>\$6,728</b>		<b>\$6,728</b>	<b>-</b>

118. Under FIFO, the first money in the account is the first money to be disbursed from the account. In this example, the transfer from the Strattham BA '5720 Account to defendant Thomas Avellino on 9/5/2002 is taken first from the balance in the account prior to the Initial Transfer of \$350,000 from BLMIS (\$11,728), which consists of non-BLMIS funds. Once the non-BLMIS funds are used, the remainder of the transfer to defendant Thomas Avellino (\$355,000 less \$11,728 = \$343,272) is considered a Subsequent Transfer of BLMIS funds under FIFO. Further, under FIFO, the remaining BLMIS funds were used for other disbursements.

E. SUBSEQUENT TRANSFERS OF BLMIS FUNDS USING LOWEST INTERMEDIATE  
BALANCE RULE ("LIBR")

119. The Lowest Intermediate Balance Rule ("LIBR") is a tracing principle used to determine the rights to funds remaining in a commingled bank account (*e.g.*, the rights of a trust beneficiary or the rights of a secured party). LIBR assumes that trust or secured funds deposited into a commingled bank account are the last funds disbursed from that account, and any disbursements made from the account are taken first from funds other than the trust or secured funds until the total balance in the account falls below the amount of those trust or secured funds. In other words, under LIBR, trust or secured funds are assumed to fall to the bottom of the commingled bank account and subsequent disbursements made from the commingled account are taken off the top first.

120. I have applied the LIBR tracing method to the transactions in the Nine A&B Entity Bank Accounts to specifically identify Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants. I have assumed that the BLMIS funds are equivalent to the trust or secured funds referred to in my explanation of LIBR above. In this case, for example, BLMIS funds remain in the Strattham BA '5720 Account until all non-BLMIS funds are disbursed from that account. Non-BLMIS funds deposited into the Strattham BA '5720 Account under LIBR will sit on top of the BLMIS funds and will be used first for subsequent disbursements. Subsequent disbursements will be taken from the BLMIS funds only when the non-BLMIS funds are used up and the balance in the Strattham BA '5720 Account (*i.e.*, the lowest intermediate balance) falls below the amount of the BLMIS funds in the account.

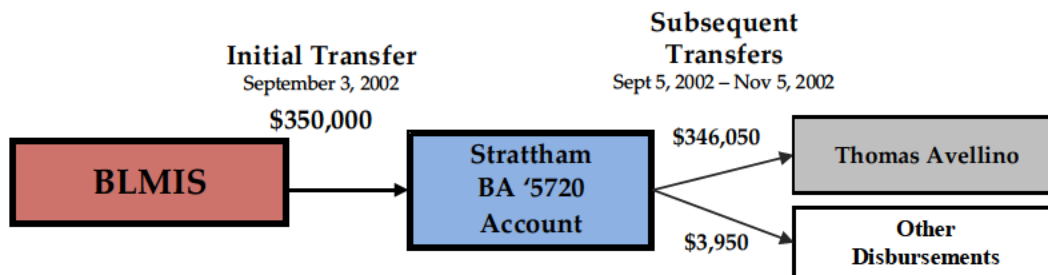
121. By applying the LIBR tracing method, I identified **\$71,547,157** in Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants, as summarized in **Figure 34** below, and as further detailed in **Exhibit 14.3**.

**FIGURE 34**  
**Subsequent Transfers of BLMIS Funds**  
**Under the LIBR Tracing Method**

A&B Subsequent Transferee Defendant(s)	Subsequent Transfers of BLMIS Funds (under LIBR)
Michael Bienes and/or Dianne Bienes	\$34,069,896
Frank Avellino and/or Nancy Avellino	\$23,255,218
A&B Entity Defendants	\$7,493,837
Thomas Avellino	\$2,877,612
Ascent, Inc	\$1,151,071
The Avellino Family Foundation	\$2,100,000
Other A&B Subsequent Transferee Defendants	\$599,523
<b>TOTAL</b>	<b>\$71,547,157</b>

122. Again, using the Initial Transfer of \$350,000 received on 9/3/2005, **Figure 35** shows the Subsequent Transfers of BLMIS funds from the Strattham BA '5720 Account using the LIBR tracing method and illustrates the pathway through which the Subsequent Transfers took place.

**FIGURE 35**



123. The application of the LIBR tracing method in this example is shown in **Figure 36**.

**FIGURE 36**

Date	Amount	Running Balance	Description Per Strattham BA '5720 Account Statement	BLMIS Funds	Other Funds
<b>\$11,728</b>					
9/3/2002	\$350,000	\$361,728	Deposit	\$352,778	\$8,950
9/5/2002	(\$355,000)	\$6,728	Transfer Debit TRANSFER TO DEPOSIT ACCOUNT REDACTED3551	(\$346,050)	(\$8,950)
<b>Balance</b>		<b>\$6,728</b>		<b>\$6,728</b>	<b>-</b>

124. Under LIBR, the BLMIS funds deposited into the Strattham BA '5720 Account on 9/3/2002 fall to the bottom of the account and the non-BLMIS funds in the account get disbursed first. In this example, the transfer from the Strattham BA '5720 Account to defendant Thomas Avellino on 9/5/2002 is taken first from the balance of other funds in the account prior to the Initial Transfer of \$350,000 from BLMIS (\$8,950), which consists of non-BLMIS funds.<sup>63</sup> Because the non-BLMIS funds are now completely used and the balance in the account (*i.e.*, \$6,728) has fallen below the amount of BLMIS funds in the account, the remainder of the transfer to defendant Thomas Avellino (\$346,050) is considered a Subsequent Transfer of BLMIS funds under LIBR. Further, under LIBR, the remaining BLMIS funds from the \$350,000 Initial Transfer (\$350,000 less \$346,050 = \$3,950) were used for other disbursements.

**F. SUBSEQUENT TRANSFERS OF BLMIS FUNDS USING RESTATED TRACING RULES**

125. I understand that certain rules regarding tracing of funds through a commingled bank account were restated in 2011.<sup>64</sup> I have applied these restated tracing rules to the

<sup>63</sup> At the time of the \$350,000 Initial Transfer of BLMIS funds into the Strattham BA '5720 Account on 9/3/2002, under the LIBR tracing method, there was \$2,778 of BLMIS funds remaining in the account balance from the \$35,000 Initial Transfer of BLMIS funds into the Strattham BA '5720 Account on 4/5/2002. See Exhibit 13.8.

<sup>64</sup> See Restatement (Third) of Restitution and Unjust Enrichment § 59 (AM. LAW. INST. 2011).



transactions in the Nine A&B Entity Bank Accounts to specifically identify Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants.

126. Pursuant to these restated tracing rules, withdrawals from a commingled bank account can be “marshaled so far as possible in favor of the claimant” (here, the Trustee), and the claimant can “claim the entire advantage of beneficial withdrawals that can be attributed to the claimant’s funds” (here, BLMIS funds). Further, the claimant can trace to his benefit any withdrawal from the commingled bank account that does not exceed the lowest balance reached in that commingled account between 1) the point at which the Trustee’s funds (*i.e.*, BLMIS funds) are deposited into the commingled bank account, and 2) the point at which the withdrawal is made.

127. By applying the restated tracing rules, I identified **\$74,156,412** in Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants, as summarized in **Figure 37** below, and as further detailed in **Exhibit 14.4**.

**FIGURE 37**  
**Subsequent Transfers of BLMIS Funds**  
**Under the Restated Tracing Rules**

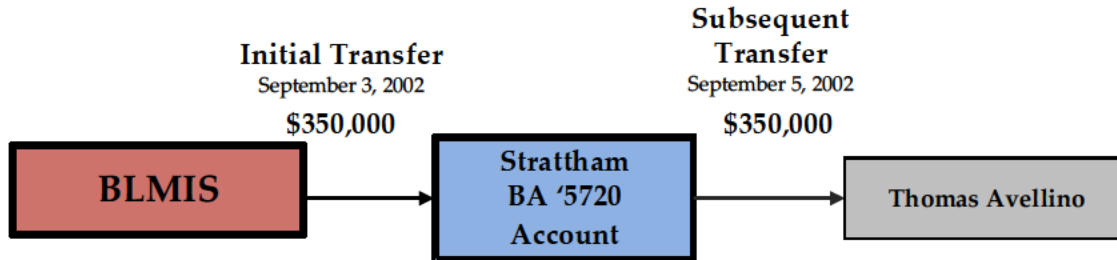
A&B Subsequent Transferee Defendant(s)	Subsequent Transfers of BLMIS Funds (under Restated Tracing Rules)
Michael Bienes and/or Dianne Bienes	\$34,499,002
Frank Avellino and/or Nancy Avellino	\$24,364,461
A&B Entity Defendants	\$7,835,118
Thomas Avellino	\$3,097,660
Ascent, Inc	\$1,383,896
The Avellino Family Foundation	\$2,280,594
Other A&B Subsequent Transferee Defendants	\$695,681
<b>TOTAL</b>	<b>\$74,156,412</b>

128. Again, using the Initial Transfer of \$350,000 received on 9/3/2002, **Figure 38** shows the Subsequent Transfer of BLMIS funds from the Strattham BA ‘5720 Account using the



restated tracing rules and illustrates the pathway through which the Subsequent Transfer took place.

**FIGURE 38**



129. The application of the restated tracing rules in this example yields the same results as the application of the LIFO tracing method described above, and is shown in **Figure 39**.

**FIGURE 39**

Date	Amount	Running Balance	Description Per Strattham BA '5720 Account Statement	BLMIS Funds	Other Funds
		\$11,728			
9/3/2002	\$350,000	\$361,728	Deposit	\$350,000	\$11,728
9/5/2002	(\$355,000)	\$6,728	Transfer Debit TRANSFER TO DEPOSIT ACCOUNT REDACTED3551	(\$350,000)	(\$5,000)
<b>Balance</b>		<b>\$6,728</b>		<b>-</b>	<b>\$6,728</b>

130. Under the restated tracing rules, as the balance of BLMIS funds in the Strattham BA '5720 Account at the time of the transfer to defendant Thomas Avellino was \$350,000, all \$350,000 is considered a Subsequent Transfer of BLMIS funds.

**G. SUBSEQUENT TRANSFERS OF BLMIS FUNDS USING PROPORTIONALITY TRACING METHOD**

131. Proportionality (also known as pro rata) is another tracing method used to trace funds into and out of a commingled bank account. This method calculates the proportion of the balance in a bank account between sources each time a deposit is made and applies that proportion to the next disbursement from the account.

132. I have applied the proportionality tracing method to the transactions in the Nine A&B Entity Bank Accounts to specifically identify Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants. In this case, for example, I calculated the proportion of the balance in the Strattham BA '5720 Account that was attributable to deposits from BLMIS versus deposits from other sources. I then identified the source of each disbursement according to the proportion in the bank account balance at the time of the disbursement.

133. By applying the proportionality tracing method, I identified \$70,797,853 in Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants, as summarized in **Figure 40** below, and as further detailed in **Exhibit 14.5**.

**FIGURE 40**  
**Subsequent Transfers of BLMIS Funds**  
**Under the Proportionality Tracing Method**

<b>A&amp;B Subsequent Transferee Defendant(s)</b>	<b>Subsequent Transfers of BLMIS Funds (under Proportionality)</b>
Michael Bienes and/or Dianne Bienes	\$33,855,231
Frank Avellino and/or Nancy Avellino	\$22,621,864
A&B Entity Defendants	\$7,556,960
Thomas Avellino	\$2,842,103
Ascent, Inc	\$1,194,810
The Avellino Family Foundation	\$2,135,399
Other A&B Subsequent Transferee Defendants	\$591,487
<b>TOTAL</b>	<b>\$70,797,853</b>

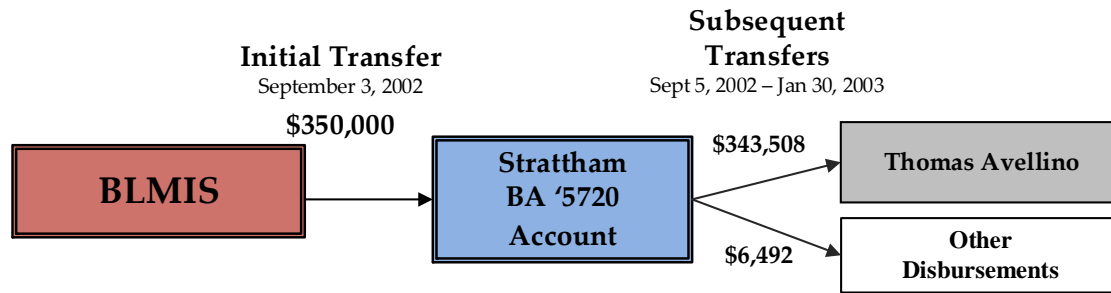
*\*difference due to rounding*

134. Using the Initial Transfer of \$350,000 received on 9/3/2002, the following describes how the proportionality tracing method is applied to the activity in the Strattham BA '5720 Account:

- The balance in the account just prior to a deposit from BLMIS on 9/3/2002 was **\$11,728**, which was comprised of nearly 100% of funds from other sources (\$18 or .15% of the account balance was BLMIS funds remaining from the \$35,000 Initial Transfer on 4/5/2002)
- A deposit from BLMIS of \$350,000 was then received into the account, bringing the account balance to **\$361,728**
- The total account balance is now comprised of approximately **97% BLMIS funds** (\$350,018 divided by \$361,728) and approximately **3% other sources**
- The next disbursement from the account was **\$355,000** to defendant Thomas Avellino
- Applying the proportion of the balance in the account (approximately 97% BLMIS / 3% other sources) results in allocating the transfer of \$355,000 to defendant Thomas Avellino as follows:
  - \$343,508 – Subsequent Transfer of BLMIS funds
  - \$11,492 – transfer from other sources
- The remaining BLMIS funds from the \$350,000 Initial Transfer (\$350,000 less \$343,508 = \$6,492) were used for other disbursements.

135. The results of this example are depicted in **Figure 41**, which also illustrates the pathway through which the Subsequent Transfers took place:

FIGURE 41



*H. RESULTS OF TRACING SUBSEQUENT TRANSFERS OF BLMIS FUNDS*

136. Of the total \$86,061,779 in transfers to the A&B Subsequent Transferee Defendants during the Post January 2001 Period from bank accounts held by the A&B Entity Defendants that received BLMIS funds, I identified a range of Subsequent Transfers of BLMIS funds to the A&B Subsequent Transferee Defendants of \$69,845,850 to \$74,167,200 based on applying five tracing methods that are applied by forensic accountants to trace funds through commingled bank accounts. See **Figure 42** below. See also **Exhibit 14.6** for my determination of the ranges of Subsequent Transfers.

**FIGURE 42**  
**Ranges of Subsequent Transfers of BLMIS Funds**

A&B Subsequent Transferee Defendant(s)	Total Transfers from A&B Entity Defendants	LOW end of Range of Subsequent Transfers	HIGH end of Range of Subsequent Transfers
Michael Bienes and/or Dianne Bienes	\$34,612,379	\$33,192,543	\$34,502,502
Frank Avellino and/or Nancy Avellino	\$26,805,977	\$22,621,864	\$24,364,461
A&B Entity Defendants	\$12,520,000	\$7,424,194	\$7,842,406
Thomas Avellino	\$5,846,507	\$2,785,960	\$3,097,660
Ascent, Inc	\$2,693,816	\$1,151,071	\$1,383,896
The Avellino Family Foundation	\$2,640,000	\$2,100,000	\$2,280,594
Other A&B Subsequent Transferee Defendants	\$943,100	\$570,217	\$695,681
<b>TOTAL</b>	<b>\$86,061,779</b>	<b>\$69,845,850</b>	<b>\$74,167,200</b>

*\*difference due to rounding*

## **XII. SIGNATURE AND RIGHT TO MODIFY**

137. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

By:



Lisa M. Collura, CPA, CFE, CFF  
June 5, 2020

### **XIII. LIST OF EXHIBITS**

- Exhibit 1: Curriculum Vitae
- Exhibit 2: Documents Considered
- Exhibit 3: Monthly Average Available Balances in 703 Account, BT Account and 700 Account
- Exhibit 4.1: List of November 1992 Cash Withdrawals from the A&B Accounts
- Exhibit 4.2: Activity in the 700 Account on November 16 & 17, 1992
- Exhibit 4.3: Activity in the 703 Account from November 16 - 23, 1992
- Exhibit 4.4: Securities Held in 686 Custody Account as of November 23, 1992
- Exhibit 4.5: A&B Distribution of \$113 Million & Activity in Eight BLMIS Accounts
- Exhibit 5: List of BLMIS Feeder Fund Accounts
- Exhibit 6: Schedule of Cash Deposits into BLMIS by Year (1981 - 2008)
- Exhibit 7: List of All Cash Transactions in the A&B Entity Accounts
- Exhibit 8: Letter from BLMIS Customer Files for the A&B Entity Accounts
- Exhibit 9: Results of Tracing Analysis–A&B Entity Accounts (*Post January 2001 Period*)
- Exhibit 10: Reconciliation and Tracing Results – A&B Entity Accounts
- Exhibit 11: Summary of Transfers from A&B Entity Defendants to A&B Subsequent Transferee Defendants
- Exhibit 11.1: Summary of FBO Transfers from A&B Entity Defendants to A&B Subsequent Transferee Defendants
- Exhibit 12: Detail of Transfers from A&B Entity Defendants to A&B Subsequent Transferee Defendants
- Exhibit 13.1: Excel Spreadsheet “Aster NT ‘7237 Account Activity and Analysis”
- Exhibit 13.2: Excel Spreadsheet “Grosvenor CN ‘6545 Account Activity and Analysis”
- Exhibit 13.3: Excel Spreadsheet “Grosvenor NT ‘6281 Account Activity and Analysis”
- Exhibit 13.4: Excel Spreadsheet “Kenn Jordan NT ‘1748 Account Activity and Analysis”
- Exhibit 13.5: Excel Spreadsheet “Mayfair CN ‘6558 Account Activity and Analysis”
- Exhibit 13.6: Excel Spreadsheet “Mayfair NT ‘3199 Account Activity and Analysis”
- Exhibit 13.7: Excel Spreadsheet “St. James CN ‘0119 Account Activity and Analysis”
- Exhibit 13.8: Excel Spreadsheet “Strattham BA ‘5720 Account Activity and Analysis”
- Exhibit 13.9: Excel Spreadsheet “Strattham BoA ‘5422 Account Activity and Analysis”
- Exhibit 14.1: Subsequent Transfers under the LIFO Tracing Method
- Exhibit 14.2: Subsequent Transfers under the FIFO Tracing Method
- Exhibit 14.3: Subsequent Transfers under the LIBR Tracing Method
- Exhibit 14.4: Subsequent Transfers under the Restated Tracing Rules
- Exhibit 14.5: Subsequent Transfers under the Proportionality Tracing Method
- Exhibit 14.6: Ranges of Subsequent Transfers of BLMIS Funds